JOURNAL

OF

COMPARATIVE LEGISLATION

AND

INTERNATIONAL LAW.

EDITED FOR

THE SOCIETY OF COMPARATIVE LEGISLATION

BY

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AND

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"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῇ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

New Series. Vol. XVIII., Part 2.

LONDON:

JOHN MURRAY, ALBEMARLE STREET, W.

1918.

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M. LOUIS RENAULT.

[*Par* CHARLES LYON-CAEN, *Membre de l'Institut de France, Professeur à la Faculté de Droit de l'Université de Paris.*]

M. LOUIS RENAULT, Professeur à la Faculté de Droit de l'Université de Paris et à l'Ecole libre des sciences politiques, Ministre plénipotentiaire honoraire, jurisconsulte du Ministre des affaires étrangères, Membre de la Cour permanente d'arbitrage de La Haye, Membre de l'Institut de France, est mort, le 8 Février 1918, à Barbizon (département de Seine-et-Marne), dans la villa où il se plaisait à venir se reposer en famille depuis un grand nombre d'années.

Louis Renault a été le véritable fondateur en France de l'enseignement du droit international. Il a, durant les trente dernières années, joué un rôle capital dans la conclusion des nombreuses conventions internationales qui ont été conclues entre les Etats, et il a été membre d'un grand nombre de tribunaux d'arbitrage international. Aussi sa légitime réputation n'était pas restreinte à la France, elle s'était étendue à tous les pays, et partout, sa mort a provoqué des sentiments de profonds et justes regrets.

Il suffira de faire le récit des faits et des actes qui ont rempli sa vie, pour montrer que la mort de Louis Renault est une grande perte, non seulement pour son pays, mais encore pour tous les pays où l'on souhaite le triomphe du droit dans les rapports internationaux.

Né à Autun (Saône et Loire) le 21 Mai 1843, Louis Renault, après avoir fait de brillantes études au collège de sa ville natale, devint en 1861 étudiant à la Faculté de Droit de Paris. Il y fut reçu successivement Licencié en Droit en 1864 et Docteur en Droit en 1867. Dès l'année suivante (1868), il fut reçu le premier au concours d'agrégation des Facultés de Droit. Attaché à la Faculté de Droit de Dijon, il y enseigna successivement le droit romain

et le droit commercial. En 1873 il fut appelé à la Faculté de Droit de Paris, et dès 1874 il suppléa le professeur de Droit des Gens (ou droit international public) qu'il remplaça comme professeur titulaire, en 1881. En 1874, à l'époque même où il débutait dans l'enseignement du droit international à la Faculté de Droit de Paris, Louis Renault fut chargé à l'Ecole libre des sciences politiques d'un cours portant sur le droit international résultant de traités et sur les consulats. Il donna ces deux enseignements sans interruption de 1874 à 1918, c'est à dire pendant 44 ans avec un éclatant succès.

On ne pouvait guère, tant était bien établie sa réputation, créer quelque part un enseigement de droit international sans songer à le lui confier. Aussi fut-il chargé d'enseigner le droit international à l'Ecole supérieure de guerre et à l'Ecole supérieure de la Marine, aux officiers des armées de terre et de mer, élèves de ces écoles.

Louis Renault n'a pas été seulement un professeur ; on peut dire que, dans le domaine du droit international, il a été à la fois conseil du Gouvernement français, magistrat et législateur.

En 1890, un poste de jurisconsulte du Ministère des affaires étrangères fut créé par M. Ribot et Louis Renault y fut nommé. Là, son activité a été considérable. Il était consulté par le Ministre sur toutes les questions de quelque importance se rattachant au droit international public ou au droit international privé. Les avis qu'il a ainsi donnés pendant plus d'un quart de siècle, ne peuvent se compter. En même temps, il faisait partie, comme membre ou comme président, de toutes les commissions extra-parlementaires constituées pour s'occuper de questions se rapportant au droit international.

If fut très souvent appelé à déployer son activité hors de France. Depuis une trentaine d'années, il a représenté la France dans presque toutes les conférences diplomatiques n'ayant pas un objet purement politique, qu'il fut seul délégué ou qu'il fit partie d'une délégation composée de plusieurs membres. Il a ainsi participé aux Conférences de Paris pour la protection des câbles sous-marins (1883 et 1886), à la Conférence de Paris pour la révision de la Convention de Berne relative au transport international des marchandises par chemins de fer, aux Conférences de Paris (1896) et de Berlin (1908) relatives à la révision de la Convention de Berne de 1886 pour la protection des œuvres de littérature et d'art, aux Conférences de Paris de 1902 et de 1910 pour la répression de la traite des blanches, à la Con-

férence de Genève de 1906 relative à la révision de la Convention de Genève de 1864 pour l'amélioration du sort des militaires blessés dans les armées en campagne, à la Conférence navale de Londres de 1909, aux Conférences de Droit international privé de La Haye, aux Conférences de La Haye de 1910 et de 1912 pour l'unification du droit en matière de lettres de change, de billets à ordre et de chèques, a là Conférence de Paris de 1910 relative à la navigation aérienne, aux deux Conférences de la paix réunies à La Haye en 1899 et en 1907.

Dans toutes ces conférences, son influence a été considérable. Souvent, il a été à la fois président de la principale commission et en même temps rapporteur, de telle sorte que les textes des conventions ont été rédigés par lui. Spécialement, aux deux conférences de la paix de La Haye, après avoir pris part à presque toutes les discussions qui remplirent 150 séances, il a rédigé plusieurs importants rapports, le rapport général et le protocole final.

Aussi, le Gouvernement français, désigna-t-il Louis Renault comme membre de la Cour permanente d'arbitrage de La Haye. En cette qualité, il a été, dans un grand nombre de litiges, choisi comme arbitre, soit par le Gouvernement français dans des affaires où la France était partie, soit par des gouvernements étrangers.

Des services si nombreux, si variés et si grands méritaient une récompense exceptionnelle : en 1907, sur la proposition d'un grand nombre de personnes des pays les plus différents, le Parlement norvégien décerna à Louis Renault le prix Nobel de la paix.

Mais il ne faudrait pas croire que le lauréat du prix Nobel de 1907 fût un pacifiste. Il ne poursuivait point l'établissement d'une paix perpétuelle entre les Etats. Il connaissait trop bien l'histoire et avait trop le sens des réalités pour se laisser entraîner à cette noble, mais décevante et dangereuse chimère. Il redoutait avec raison que la diffusion des idées pacifistes ne nuisit au développement des forces militaires qu'imposait l'état de l'Europe. Le but élevé et ardu qu'il poursuivait était de faire pénétrer le plus possible le droit dans les rapports entre les Etats pour rendre leur relation plus faciles et meilleures en temps de paix, et surtout pour adoucir les rigueurs de la guerre.

En dehors du prix Nobel de la paix, des distinctions honorifiques de toutes sortes furent décernées à Louis Renault qui n'en rechercha, pourtant, jamais aucune. En 1901, il fut élu Membre de l'Académie

des sciences morales et politiques de l'Institut de France pour la Section de Législation, droit public et jurisprudence, il avait reçu le titre de Docteur *honoris causa* de plusieurs universités étrangères, notamment de l'Université d'Oxford, il était commandeur de la Légion d'honneur et titulaire des plus hautes décorations de nombreux pays étrangers, spécialement (pour la Grande-Bretagne) grand' croix de Saint-Michel et de Saint-Georges.[1] Il avait été nommé Ministre plénipotentiaire honoraire, titre très rarement attribué à des personnes qui n'ont pas été de la carrière diplomatique ou consulaire.

Il a été un des membres les plus actifs et les plus influents de l'Institut de Droit international et fut le Président de la session de cette association savante tenue à Paris en 1914.[2]

En 1916, à la mort du marquis de Vogué, il fut nommé président de la Société des blessés des armées de terre et de mer et en même temps du Comité de la Croix rouge française qui réunit des représentants de cette société et de deux autres associations, celle des Dames françaises et celle des Femmes de France.

Louis Renault a été fondateur et le chef de l'Ecole française de Droit international. Tous ceux qui, en France, enseignent cette branche du droit ont été ses élèves ou subissent l'influence de ses idées et de sa méthode. Celle-ci a principalement consisté à introduire dans l'étude du droit international la précision, la netteté et, dans la mesure du possible, la rigueur qui depuis longtemps caractérisent la méthode appliquée à l'étude des autres parties du droit.

Il n'a pas été un pur théoricien. Grâce à ses qualités de jurisconsulte du Ministère des affaires étrangères, de représentant de la France à de nombreuses conférences diplomatiques, de membre de nombreux tribunaux d'arbitrage, il avait acquis une grande expérience pratique ; sans une telle expérience, la théorie risque de se perdre dans les abstractions, les subtilités et de conduire à des solutions sans réalisation pratique possible. Dans ses cours, il montrait les applications des règles qu'il exposait et les expliquait ou les

[1] Cette haute récompense réservée aux personnes qui ont rendu de grands services à la Marine, lui avait été attribuée par le Gouvernement anglais à raison du rôle considérable qu'il avait joué à la Conférence Navale de Londres de 1909.

[2] La dernière session de l'Institut de Droit international tenue avant la guerre actuelle a eu lieu en 1913 à Oxford, sous la présidence d'une des plus grandes autorités dans le droit international, Sir Thomas Erskine Holland.

justifiait en faisant à ses élèves le récit des faits dont il avait été témoin ou acteur, et en leur parlant des actes dont il avait été parfois l'un des auteurs principaux.

Ses hautes qualités de méthode, de simplicité, de clarté qui distinguaient son enseignement, sont celles qu'on trouve aussi dans ses nombreux rapports faits aux conférences diplomatiques auxquelles il a pris part. Ce sont vraiment des modèles du genre.

Si Louis Renault n'a pas publié un traité complet de droit international, il a, du moins, écrit d'assez nombreux travaux sur des sujets très variés. On peut citer notamment les études sur *Le projet de réforme judiciaire en Egypte* (1877), sur *La succession ab intestat des étrangers en France et des Français à l'étranger*, sur *Les rapports internationaux concernant la poste et le télégraphe* (1877), sur *La propriété littéraire et artistique au point de vue international*, sur *L'extradition en Angleterre* (1897), une *Introduction à l'étude du droit international* (1897). Il a aussi publié avec l'auteur de cette notice un *Traité de droit commercial* (9 volumes parus) parvenu à sa 4e édition et un *Manuel de droit commercial* destiné surtout aux étudiants dont la 12e édition a été publiée peu de mois après sa mort.

Les derniers écrits de Louis Renault se rattachent à la guerre actuelle. Il a, le 26 Octobre 1914, donné lecture à la séance publique annuelle des cinq académies de l'Institut de France d'un mémoire sur *La guerre et le droit des gens au XXe siècle.* En 1917, il a publié une brochure intitulée *Les premières violations du droit des gens par l'Allemagne, Luxembourg et Belgique.* Il répond dans ce remarquable travail aux arguties des jurisconsultes allemands inventés après coup pour justifier l'invasion de la Belgique et établit avec une force irrésistible, en s'appuyant sur les textes des traités et sur les principes les plus incontestables, qu'il y a eu là une violation odieuse du droit des gens, un manquement à la foi jurée.

Louis Renault a été un jurisconsulte dans le sens le meilleur et le plus élevé du mot. Sa seule préoccupation a été la recherche du juste et du vrai. Il développait ses idées avec une simplicité, une netteté, un accent du conviction qui captivaient son auditoire. Un de ses élèves a pu dire que son cours était, en même temps qu'une leçon de droit, une leçon de morale et de profonde philosophie. A lui s'applique admirablement ce qu'Ulpien, dans un texte fameux placé au début du Digeste de Justinien, dit du rôle des jurisconsultes: "*Jus est ars æqui et boni ; cujus merito quis nos sacredotes appellet ; justitiam*

namque colimus et boni et æqui notitiam profitemur, æquum ab iniquo separantes, licitum ab illicito discernentes, veram, nisi fallor, non simulatam philosophiam affectantes."

Le nom de Louis Renault restera dans la mémoire de ses élèves, de ses collègues, de ceux avec lesquels il a collaboré, de tous ceux qui l'ont connu, par conséquent aimé et estimé, comme celui d'un jurisconsulte de premier ordre, d'un professeur éminent, d'un bon citoyen qui a honoré son pays, d'un homme de bien qui a fait progresser la science et l'enseignement du droit et qui a consacré son activité bienfaisante à préparer à l'humanité un avenir meilleur, en s'efforçant de faire prédominer le Droit dans les rapports entre les Etats. Sans doute, la guerre actuelle constitue par des pratiques qui déshonorent la civilisation, un recul grave et pénible dans cette voie. Mais il n'y a là qu'une crise passagère, le progrès reprendra un jour sa marche, et le nom de Louis Renault méritera d'être cité au premier rang parmi ceux des hommes de haute intelligence et de cœur qui ont contribué à poser les premières bases de cette société des nations qui assurera au monde une paix durable et le triomphe du droit sur la force.

* * *

To the eloquent eulogy on M. Renault pronounced by a distinguished compatriot and colleague may be added a sympathetic word in the name of those who knew him less intimately, but who regarded him with no less admiration. By them he is remembered as the forerunner of a type of jurist whom our times and circumstances call for but who have yet to come; a type which must multiply if Law is to govern the relations between States. He had attained a position unlike that of any other European lawyer and comparable to that of a few mediæval jurists when Roman law formed the common law of the greater part of the civilised world. His works were authoritative in other countries scarcely less than in his own. Nowhere were his gifts more impressively visible than in international conferences. He could deftly and promptly harmonise the conflicting opinions of jurists of different countries. Possessing what for want of a better phrase may be called the legal imagination, he could suggest to disputants vainly struggling to disentangle a principle some felicitous formula acceptable to them all. He possessed great dialectical acuteness, but it was always subordinated to a sound judgment, schooled by long converse with affairs.

" The man of all others who commanded universal attention and weight whenever he spoke was Professor Renault "—such was the opinion of one of his colleagues, and it was universally shared. Excellent specimens of lucid exposition, his books quite inadequately represent his services to jurisprudence. In a multitude of opinions, which often determined the action of State departments, and in his many reports, which formed the basis of the decisions of international conferences, is to be found his best work. His opinions were, by general agreement, among the " Responsa prudentium," in matters relating to international law. Reputations were lost and won at the Hague in 1899 and 1907, and at the London Naval Conference. No one, in these assemblies, acquired greater authority than M. Renault. In the negotiations and conferences which must come with peace, he will be much missed.

WOMEN AS PRACTITIONERS OF LAW.

[*Contributed by* WILLIAM RENWICK RIDDELL, LL.D., F.R.S. Can., *Justice of the Supreme Court of Ontario.*]

A LITTLE more than a quarter of a century ago a flutter of what in a less dignified body would have been called excitement went through the Convocation Room at Osgoode Hall, Toronto, at a meeting of the Benchers of the Law Society of Upper Canada—a woman had applied to be admitted on the books of the Law Society, a thing without precedent in the century of the Society's existence.

From 1797, the legal profession in this Province has been master in its own house: in that year the Provincial Legislature of Upper Canada passed an Act [1] which authorised all the persons then admitted to practice and practising at the Bar to form themselves into a Society, the "Law Society of Upper Canada," which Society was to prescribe rules and regulations for students and call to the Bar, and generally to have control over the profession. Since the organisation of that Society, no one has been or could be allowed to act as barrister in any of our Courts unless and until he was called to the Bar by the Society.[2]

While there has since 1797 been a distinction between the barrister and the attorney (or solicitor),[3] there has never been any

[1] (1797) 37 Geo. III. c. 13 (U.C.)

[2] Those interested will find a full historical account of the Law Society of Upper Canada in my work published by the Law Society of Upper Canada in 1916, *The Legal Profession in Upper Canada in its Early Periods.*

The Law Society of Upper Canada was incorporated in 1822 by the Provincial Act 2 Geo. IV. c. 5 (U.C.); but its function to call to the Bar was not interfered with.

[3] The attorney practised in the Common Law Courts, the solicitor in Chancery. We had (after 1794) only Common Law Courts for a time and consequently our practitioners in "the lower branch of the profession" were then attorneys (or to use the time-honoured orthography "attornies"); but in 1837, the Provincial Act, 7 Geo. IV. c. 2 (U.C.) instituted a Court of Chancery; and thereafter, till the coming into force of the Judicature Act in 1881, a member of this branch was an "Attorney-at-Law and Solicitor-in-Chancery." The Judicature Act of 1881 abolished the name attorney, and now these are all solicitors.

objection to the same person filling both positions; and from the beginning most barristers were also attorneys and *vice versa*.[1] While the Law Society does not admit the solicitor (to use the present nomenclature), the duty was cast upon it by the Act of 1857[2] to examine and inquire touching the fitness and capacity of an applicant to act as an attorney or solicitor: and ever since, the Law Society examines the candidate and gives a "Certificate of Fitness," on the presentation of which the Court admits him. Without such a certificate the Court cannot admit any one, just as without a call to the Bar by the Law Society the Court cannot hear any counsel. It is necessary before he can obtain a certificate of fitness or be called that the applicant for admission as a solicitor or for call to the Bar must have been on the books of the Society for five years (in the case of a graduate of a British University, for three years).

At the time the disturbing application was made (as now) the Governing Body, the Benchers (who were in fact the real corporation) were mainly elected by the barristers of the Province—a few Benchers *ex efficio* being the exception. An election is held every five years, so that the Benchers fairly well represent the sentiment of the profession at large, perhaps the more conservative sentiment.

It was to this body met in Convocation that the petition of Miss Clara Brett Martin to be admitted on their roll was presented. There was immediate opposition; true the applicant was a modest, self-respecting young woman, well-born, well-bred, and well-educated—but she was a woman.

Ontario.—After a little discussion, on June 30, 1891, Convocation decided that they had no power to admit a woman upon their books.[3] Thereupon the Legislature of Ontario at the instance of Sir Oliver Mowat, the Prime Minister,[4] passed an Act[5] in the

[1] From a recent examination which I have made of the Rolls I find that of the practitioners of law in Ontario, all but 4 per cent. are barristers, and all but 2½ per cent. solicitors.

[2] 20 Vic. c. 63 (Can.).

[3] The same decision was come to by the Bar of Montreal a few months ago; and the Courts declined to interfere.

[4] Sir Oliver Mowat, although through all his long and useful life he called himself a Reformer or a Liberal, was quite generally by both political friend and foe (he had none but political foes) believed to be and not infrequently called a Tory or Conservative of the most Conservative type. In the matter now under discussion he was a Radical.

[5] (1892) 55 Vic. c. 32 (Ont.).

following terms: "The Law Society may in its discretion make rules providing for the admission of women to practise as solicitors."

Convocation by a bare majority [1] directed the Legal Education Committee to frame regulations, and on their report being adopted a rule was passed December 27, 1872, to become effective at Hilary Term of the following year.

Miss Martin was duly articled—the regulations for the admission of women as solicitors did not differ from those prescribed for men. She was not satisfied with the lower branch of the profession; but there was no statute permitting her to be called to the Bar.

In 1895, the Ontario Legislature (again at the instance of Sir Oliver Mowat) passed the Act [2] which amended the previous Act by giving the Law Society discretion to call women to the Bar. In the following May, Miss Martin wrote to Convocation, expressing her desire to be called to the Bar; and after a good deal of discussion a rule was passed substantially the same as that for men [3] under which she was called to the Bar, February 2, 1897: she was admitted as a solicitor on the same day.

Since that time there have been seven other women admitted as solicitors and called to the Bar—of the eight, the

[1] The mover was Sir Oliver Mowat (who was a Bencher *ex officio* as being Attorney-General of the Province), the Seconder Hon. S. H. Blake (who was a Bencher *ex officio* as being an ex Vice-Chancellor): the vote was 12 to 11 and would have been a tie, had it not been that one Bencher was on his feet in Court and did not reach Convocation Room until the vote was just being taken. His objection was that the Province cast upon the Benchers of the Law Society the duty of deciding in their discretion what should have been decided by the Legislature as a matter of public policy. Most if not all of those who voted "Nay" were opposed to the principle of admitting women altogether. The Minute Books of the Law Society for 1892, pp. 544, 550, and 551, contain the proceedings of Convocation.

[2] 58 Vic. c. 27 (Ont.).

[3] In Easter Term, May 18, 1896, her application was received; June 5, a motion to direct the Legal Education Committee to frame regulations was voted down by a vote of 9 to 6; June 30, Charles Moss, C.C. (afterwards Sir Charles Moss, Chief Justice of Ontario), gave notice (for Sir Oliver Mowat) that he would renew the motion on the first day of the following Term. In Trinity Term, September 14, the motion passed by a vote of 8 to 4; September 25, the regulations were reported and a Rule framed and read. In Michaelmas Term, November 17, a motion to rescind the Resolution of September 14 was lost, and the following day the Rule received its second and third reading and was passed.

Minute Book, No. 5, pp. 19, 738, 768, 775.

Minute Book, No. 6, pp. 10, 13, 26.

pioneer and five others practise their profession (one in another Province).[1]

It would appear that the number will somewhat increase in the immediate future. There are now four women students in the Law School in the third year, five in the second year, and eleven in the first year, while there are seven matriculants waiting for their time to come to the Law School, four entitled to attend in 1918 and three in 1919; of those in the second and third years in the Law School two have obtained honours and two honours and scholarships; eleven in the Law School have a degree in Arts, ten B.A.'s and one M.A.[2]

[1] I give the list as furnished me by the Secretary of the Law Society—it will be noticed that three have married barristers:

LIST OF WOMEN LAWYERS.

	Name.	*Address.*	*When Called.*	*Remarks.*
1.	Clara Brett Martin	Toronto	H. 1897	Practising.
2.	Eva Maude Powley	Port Arthur	E. 1902	Practising.
3.	Geraldine Bertram Robinson	Toronto	T. 1907	Married E. W. Wright, Barrister of Toronto; pays Bar fee.
4.	Grace Ellen Hewson	Toronto	E. 1908	Married, not practising.
5.	Jean Cairns	Huntsville	T. 1913	Married P. R. Morris, Barrister of Hamilton, practising at Hamilton, Ontario, with her husband.
6.	Edith Louise Paterson (*a*)	Vancouver	E. 1915	Practising in Vancouver, B.C.
7.	Mary Elizabeth Buckley (*b*)	Toronto	E. 1915	Married H. V. Laughton, Barrister of Toronto, practises a little.
8.	Gertrude Alford	Belleville	15 June, 1916	Practising in Trenton, Ontario.

(*a*) Obtained honours and Scholarships.

(*b*) Obtained honours.

[2] As has been said, the Rules of the Law Society require every applicant for Call or Admission to have been five years on the Books of the Society (three years in case of a Graduate of a British University); the last three years, he must attend the Law School at Osgoode Hall (which is entirely supported, controlled, and managed by the Law Society).

The following are the Rules respecting women:

Rules for the Admission of Women to Practise as Solicitors and Barristers-at-Law.

178. (1) Any woman who is a graduate in the Faculty of Arts in any university in His Majesty's Dominions empowered to grant such degrees, and any woman being competent as a student within the requirements of Rules 103 or 104, shall upon compliance with the following Rules, be entitled to admission to practise as a solicitor pursuant to the provisions of The Law Society Act, s. 43 (2), provided that:

(*a*) She has been entered upon the books of the Society in the same manner and

Scarcely half of 1 per cent. of the practitioners in Ontario are women ; the profession of law makes by no means the same appeal to them as medicine.

Women as Practitioners.—The women who practise law are not "wild women" ; they are earnest, well-educated women who ask

upon the same conditions as to giving notice, payment of fees, and otherwise, as are provided for admission of Students-at-Law of the graduate and matriculant class respectively ;

(*b*) She has been bound by contract in writing to serve as a clerk to a practising solicitor for a period of three or five years from the date of her entry upon the books of the society, according as she shall have been entered on the books as a graduate or matriculant :

(*c*) She has actually served under such contract for such period of three or five years, as the case may be ;

(*d*) She has complied with the conditions of the statutes and the Rules of the Society with regard to execution and filling of such contract, and any assignment thereof, and with every other requirement of the Society with regard to Students-at-Law, including attendance upon lectures in the Law School, passing of examinations, payment of fees, and every other matter or thing compliance with which by a Student-at-Law is a prerequisite to admission to practise as a solicitor.

(2) The fees payable by such woman upon receiving a Certificate of Fitness to practise shall be the same as those payable by other Students-at-Law.

(3) Upon admission to practise, such woman shall become subject to all the provisions of the statutes and the Rules of the Society with regard to solicitors, and non-compliance with or failure to observe the same or any of them shall subject her to all the disabilities and penalties imposed upon other solicitors.

179. Every woman seeking admission to practise as a Barrister-at-Law under the provisions of the Statute in that behalf shall furnish proof that :

(*a*) She has been entered upon the books of the Society pursuant to the Rules for admission of women to practise as solicitors, and has remained on such books for a period of three or five years, according as she shall have been entered as a graduate or matriculant.

(*b*) She has actually and *bona fide* attended in a barrister's chambers, or has served under Articles of Clerkship for a period of three or five years as the case may be.

(*c*) She has complied with the conditions of the statutes and every requirement of the Rules of the Society with regard to Students-at-Law, including attendance at lectures in the Law School, passing of examinations, payment of fees, and every other matter or thing compliance with which by a Student-at-Law is prerequisite to Call to the Bar.

180. The fees payable by such woman upon admission to practise as a barrister-at-law shall be the same as those payable by other Students-at-Law.

181. (1) Upon admission to practise as a barrister-at-law such woman shall become subject to all the provisions of the statutes and the Rules of the Society with regard to barristers-at-law, and non-compliance with or failure to observe the same, or any of them, shall subject her to all the disabilities and penalties imposed upon other barristers-at-law.

(2) Every such woman appearing before Convocation upon the occasion of her being admitted to practise as aforesaid, shall appear in a barrister's gown worn over a black dress, white necktie, with head uncovered.

no favours but are quite willing to do their share of the world's work on the same conditions as men.

While occasionally one of them has been known to take the brief at a trial, this is not usual; they generally retain counsel for such work and confine themselves to chamber practice. Occasionally a woman takes a Court or chamber motion, but as a general rule her work is that of a solicitor. In my own experience, as in that of judicial brethren whom I have consulted, when she appears in Court or chambers, she conducts her case with dignity and propriety, exhibiting as much legal acumen, knowledge of the law, and sound sense as her masculine *confrère*, and she does not trade upon her sex.

The admission of women to the practice of law has had in Ontario no effect upon the Bar or the Courts; the public and all concerned regard it with indifference; while no one would think of going back to the times of exclusion, no one would make it a matter of more than passing comment that a woman lawyer was engaged in the conduct of legal business. It has prevented any feeling of injustice, sex oppression, or sex partiality—it has made the career open to the talents. Otherwise it has no conspicuous merits and no faults. So far as I can find out, there has never been a charge of dishonesty or unprofessional conduct made against a woman practitioner of law in Ontario (or indeed elsewhere); it is certain that no such charge has ever been brought before the Courts.

Admission in the Other Canadian Provinces.—Of the nine Provinces of Canada, Quebec refuses women the right to practise law:[1] while the question has not arisen in Prince Edward Island, presumably the decision would be that they are excluded, as there is no special legislation. Of the other Provinces, Alberta admits them under general legislation; British Columbia under a special Act,[2] which provides that "women shall be admitted to the study of law and shall be called and admitted as barristers and solicitors upon the same terms as men." Manitoba has also a special statute,[3] which amends the Law Society Act by providing that "the expression persons includes females." New Brunswick in 1906 passed an

[1] A proposal to grant the right to women has been defeated for two successive years in the Quebec Legislature: a Bill for that purpose has been introduced during the present month (December 1917).

[2] (1912) 2 Geo. V. c. 18.

[3] (1912), 2 Geo. V. c. 32, s. 2.

Act[1] in the same terms as the British Columbia Statute above mentioned, and Nova Scotia in 1917 passed a similar Act expressly stating that it was declaratory of the existing law.[2] Ontario we have seen calls and admits under two Statutes—now combined in Revised Statutes.[3] Saskatchewan has a special Statute, the Statute Law Amendment Act 1912–13,[4] which by s. 27 provides: "The Benchers may in their discretion make rules for the admission of women to practise as barristers and solicitors."

The question as to the admission of women to the Bar has not yet come up in the Yukon Territory.[5]

The whole number of women practising law in Canada is very small, perhaps a dozen in all—*e.g.* Alberta has called only one and she got married, Saskatchewan only two; the numbers may be expected to increase, but not rapidly. I do not think that the most fervent advocate of women's rights could claim that the admission of women to the practice of law has had any appreciable effect on the Bar, the practice of law, the Bench, or the people. It is claimed that it was a measure of justice and fair play, that it removed a grievance and has had no countervailing disadvantage. That claim may fairly be allowed: in other respects, the admission of women is regarded with complete indifference by all but those immediately concerned.

United States.—In the United States women have joined the profession in somewhat larger numbers than in Canada—there are now about 1,200.

They are admitted to practise before all the Federal Courts of the United States and all the State Courts except those of Arkansas, South Carolina, and Virginia. Generally they are admitted under general legislation, but in some instances special legislation has been passed—sometimes by reason of adverse decisions of the State Courts, occasionally (it may be) *ex abundanti cautelâ*.[6]

As in Canada, no one in the United States would now think of

[1] 6 Ed. VII. c. 5.

[2] 7 & 8 Geo. V. c. 41.

[3] (1914), c. 157, c. 1-3 (2).

[4] 3 Geo. V. c. 46.

[5] Probably it would be held that they would not be admitted. See *Consolidated Ordinances* of Yukon Territory, cap. 50: "The Legal Profession Ordinance."

[6] In the United States the entry of women into the sacred circle was not always easy: the Courts were in some instances adverse, adhering to the beloved "Common

excluding women when once they were admitted. It cannot, I think, be fairly said that their admission has had any marked effect upon the Bar or the practice of law; their influence on legislation for the protection of women and children is considerable, but not more than that of an equal number of women who have not joined the profession—what influence there is has been, I think, uniformly

Law of England." Where that was the case, the Legislature was attacked with the result stated in the text. I add here a partial account of the course of the campaign.

Mrs. Myra Bradwell was the first woman to meet a rebuff in the State Courts, so far as I have seen in the Reports: she in 1869 applied to the Supreme Court of Illinois for a licence to practise law, but failed. The Court thought itself bound by the Common Law of England to refuse the application unless "the Legislature shall choose to remove the existing barriers and authorise us to issue licences equally to men and women." *In re* Myra Bradwell, (1869) 55 Ill. 535. The Supreme Court of the United States refused to interfere, (1872) 16 Wall. 130. No long time elapsed before such authority was given. On March 22, 1872, an Act was approved "to secure to all persons freedom in the selection of an occupation profession or employment" which by s. 1 enacted "that no person shall be precluded or debarred from any occupation, profession or employment (except military) on account of sex" (see Hurd's *Rev. Stat.* 1915–16, cap. 48, par. 2). In 1874, a further Act was passed "to revise the law in relation to attorneys and counsellors"; and that by s. 1 provided "No person shall be refused a licence under this Act on account of sex" (Hurd, *ut supra*, cap. 13, par. 1).

One of the Federal Courts was equally hostile. Mrs. Belva A. Lockwood in 1873 applied to be admitted as attorney and counsellor-at-law of the Court of Claims at Washington, a Federal Court of the United States. The Court held that the responsibilities of such a position were inconsistent with the holding of an office by a woman, and "a woman is without legal capacity to take the office of Attorney." *In re* Mrs. Belva A. Lockwood, exp. 9 Ct. of Cl. (Nott & Hop.) 346: sustained in the Supreme Court, 154 U.S. 116. Shortly afterwards the Supreme Court of the United States (October Term, 1876) refused to admit Mrs. Lockwood to practise in that Court "in accordance with immemorial usage in England and the law and practice in all the States until within a recent period." (See 131 *Mass. Rep.* at p. 383.)

Very shortly thereafter Congress acted: the Act of Congress, February 15, 1879, chap. 81 (20 Stat. L. 292) provides "Any woman who shall have been a member of the bar of the highest Court of any State or Territory or of the Supreme Court of the District of Columbia for the space of three years and shall have maintained a good standing before such Court and who shall be a person of good moral character shall on motion and the production of such record be admitted to practise before the Supreme Court of the United States." Under that statute, Mrs. Lockwood was admitted to practise in the Supreme Court. She was also admitted to practise in the Supreme Court of the District of Columbia and in certain of the State Courts, but her application was rejected in Virginia. The Supreme Court of the United States gave her no relief, (1893), 154 U.S. 116—and Virginia is still joined to its idols.

Miss R. Lavinia Goodell was no more successful in the Wisconsin Court in 1875; the Chief Justice, Ryan, thought that "reverence for all womanhood would suffer in the public spectacle of woman so engaged"; and in the absence of a statute her application was refused. *In re* Goodell, (1875), 39 Wis. 232.

Massachusetts then spoke to the same effect. Miss Lelia J. Robinson was

good. They have sustained a good reputation in their practice: no charge of impropriety, dishonesty, or unprofessional conduct has ever been laid against them so far as the Court records show.

Their Position as Lawyers.—The remainder of the Bar were slow to accept woman as a lawyer; where she has made her appearance, the Bar seems to have gone through the stages of amused curiosity

refused admission as an attorney and counsellor of the Supreme Court—she was not a "citizen" or a "person," and without "clear affirmative words in a Statute" the Court's hands were tied. *Re* Lelia J. Robinson, (1881) 131 Mass. 376.

The "clear affirmative words" soon came: on April 10, 1882, a statute was approved, c. 139, "The provisions of law relating to the qualification and admission to practise as attorneys-at-law shall apply to women." A similar decision in Oregon, *In re* Leonard, (1885), 12 Oregon 93, refusing admission to Mary A. Leonard led to the passing in 1885 of the statute, "Hereafter women shall be entitled to practise law as attorneys in the Courts of this State upon the same terms and conditions as men." See Lord's *Oregon Law*, s. 1079.

Tennessee in 1893 refused admission as a Notary Public to Miss F. M. Davidson in a decision which was considered to indicate that a woman could not be an attorney—the Act of 1907, chap. 69, made the law clear—"Any woman of the age of twenty-one years and otherwise possessing the necessary qualification may be granted a licence to practise law in the Courts of this State." (See Thompson's Shannon's Code of 1917, s. 5779, a, 6.)

Some other like decisions in the State Courts led to special legislation; but in most States, the Courts interpreting general legislation took a different view. The first admission was in a State in the middle West. Iowa in 1869 admitted Mrs. A. A. Mansfield under a statute providing that "any white male person" may be admitted because the affirmative declaration did not by implication deny the right to women. Missouri came next—the Court admitted Miss Barkalow; Maine admitted Mrs. C. H. Nash in 1872. To make the matter absolutely clear, chap. 98 of the Public Laws of 1899 enacts "No person shall be denied admission or licence to practise as an attorney-at-law on account of sex." In the Federal Court, District of Columbia, Miss Charlotte E. Ray was admitted about 1873; and in 1874 Miss Hewlett was admitted by the Federal District Court (Illinois); and the Federal District Court (Iowa) also admitted a woman. See 39 Wis. at pp. 238, 239.

In New Hampshire, in 1890 the petition of Mrs. Marilla M. Ricker, a widow, to be admitted to practise law was granted, the well-known Chief Justice Doe writing an elaborate opinion with a wealth of learning more or less applicable. He came to the conclusion that a woman was a "citizen" and a "person"; and an attorney not taking an official part in the government of the State (for which women are disqualified by the Common Law) there was no reason why a woman could not be an attorney. *In re* Rikver's Petition, (1890), 66 N.H. 207.

Colorado took the same view in 1891 when Mrs. Mary S. Thomas was admitted to the practice of law; she was a "person" and an attorney did not occupy any "civil office." *In re* Thomas, (1891), 27 Pac. Rep. 707; 16 Colo. 441.

Indiana held the same way in 1893—*In re* Petition of Leach exp., (1893), 134 Ind. 665.

The Connecticut Court of Errors *in re* Mary Hall, (1882), 50 Conn. 131, had gone back to the legislation of 1750 in the attempt to interpret the more recent legislation, and holding that Mary Hall was a "person" admitted her to practise—one learned Judge differing from his three brethren.

turning to real and well-grounded respect. No doubt the conservative part of the profession will always look upon the woman lawyer as unladylike, unwomanly, recreant to her natural position, overturning the laws of God, what not? That is inevitable: but the great body of the profession is beginning—has indeed progressed some distance on the way—to treat her as a desirable and useful part of the profession and the body politic. "The Courts have invariably treated women practising before them with the greatest courtesy and kindness." [1] On inquiry, I find that the Bench can discover no difference in the ability and acumen in man and woman; it is the individual talent and industry which tell, not the sex. While there are exceptions, the rule is that women do not take trial briefs; as in Ontario, they mainly confine themselves to chamber practice. The number of woman lawyers is increasing slowly if at all, and there seems to be no more fear of man losing his lead in law than in the sister profession of medicine—indeed the competition is not so great as in medicine.

If I were to sum up in a sentence the results of the admission of women to the practice of law from my experience and inquiry, I would say that it has done some good, and no harm, while all prophecies of ill results have been falsified; that its effects on the profession and practice of law have been negligible, and that it is now regarded with indifference and as the normal and natural thing by Bench, Bar, and the community at large.

[1] I quote from a letter from Mrs. Mussey, President of the Women's Bar Association of the District of Columbia, to whose kindness I owe some of the facts in the text. The position of women in the District of Columbia is peculiar in that they are admitted to the Bar of the District, but not to the Bar Association and therefore not to the American Bar Association. A prominent member of the Bar Association somewhat maliciously says that this "will suggest a distinction which still exists in the minds of men lawyers." However, the women have their own apparently prosperous Bar Association in the District of Columbia

TELEGRAPHIC COMMUNICATION DURING WAR.

[*Contributed by* CHARLES BRIGHT, F.R.S.E., M.INST.C.E.]

International Law and Submarine Cables.—In time of peace we have been in the habit of holding great international conventions as steps forward in the advance of civilisation, and in order to mitigate, to some extent, the horrors of war. At these conventions international laws are arrived at between the Powers. International law may be said, indeed, to be the product of the peace instincts of all civilised nations with a view to preventing the interruption of progress and civilisation even during hostilities.

But these international conventions and laws have received a severe shock—far harder than could have been expected—during the prevailing conflict.

In fact, Art. 15 of the Paris International Submarine Cable Convention of 1884 is sufficiently clearly specific that the said Convention for the protection of submarine cables does not at all bindingly apply to a state of war. It, indeed, indicates the right of belligerents to interrupt all telegraph lines—even those that land on neutral soil.

It comes to this, that any cable that conveys intelligence prejudicial to the interest of a belligerent may at any moment be cut by that belligerent.[1]

The fact is that the question of the treatment of submarine cables in times of war has always been left in perilous obscurity.[2]

In one of the earliest messages which passed through the first

[1] See Hague Regulations, 1907; art. 53, 54. In a word, international conventions do not apply nowadays to a state of war. Thus, when an officer (the late Admiral Sir J. C. Dalrymple Hay, K.C.B.) once inquired of his Commander-in-Chief what books on international law he should study, he received the reply, "The best thing for an officer to do is to read the *Queen's Regulations* and the *Admiralty Instructions*. If he sticks to them and the orders he gets from his Commander-in-Chief, he need never mind the lawyers and international law."

[2] See Sir John Macdonell: Lectures to the Royal United Service Institution on "Recent Changes in the Rights and Duties of Belligerents and Neutrals according to International Law." (*Journal Royal United Service Inst.* August, 1898).

Atlantic cable, sent by Mr. Buchanan, President of the United States of America, to Her Majesty the Queen, the following hope is expressed: "Will not all nations of Christendom spontaneously unite in the declaration that it shall be for ever neutral, and that its communications shall be held sacred in passing to their places of destination, even in the midst of hostilities?"

Nearly sixty years have elapsed since this message was sent. During this time cable after cable has been laid, but in spite of several international attempts to assure the neutrality of submarine cables in war time, no agreement has yet been concluded. On consideration, it is apparent that any such agreement is not at all likely to meet with general acceptation among the nations. Great Britain stands alone in this question. In no other nation can the need of neutralising the lines of communication appeal with such force, and for none has it the same interest. With colonies and troops in every quarter of the globe; with warships and coaling stations in every ocean, and depending for her very food supply on other lands, it is useless to expect that, even nominally, the potential adversaries of England (and they are many) would agree to place themselves at a disadvantage, such as would result from guaranteeing continuity to the very means which might prove to them a source of defeat and disaster.

Again, what should be feasible according to international law (a more or less academic question) and what actually happens in time of war are, unfortunately, two very different things and cannot be expected to coincide in these days.[1]

Indeed, as indicated by Lord Sydenham[2] in 1900, there is no binding agreement as to the neutrality of cables under any condition in time of war.[3]

Whilst highly important, the treatment of submarine telegraph cables in time of war is, in any case, a difficult question, and one as to which international law has so far failed to give any very clear guidance.

[1] Over this war, the Germans, of course, have never paid any regard for international conventions. For instance, the law of Nations provides that mines should not be sown in the highways of commerce.

[2] Then Major-General Sir George Sydenham Clarke, G.C.S.I., G.C.M.G., R.E., F.R.S.

[3] Discussions on paper by Captain Carlyon Bellairs, R.N., on "The Routes of Submarine Cables," *R.U.S.I. Journal*, Dec. 1900.

Let us, however, consider their position during warfare from this standpoint.

They connect up either :

(*a*) Two neutral countries, or the different parts of a neutral Empire; (*b*) two belligerent countries; (*c*) a belligerent and a neutral; (*d*) two portions of a belligerent territory.

In the above the only condition under which international law definitely restricts belligerents from interfering with a telegraph cable during warfare is that set forth under (*a*).

Condition (*c*) is a doubtful case, some authorities averring that international law countenances interference with that part of the line within belligerent waters, and others contending that no interference is justified. Speaking generally, however, it has been widely maintained that Art. 15 of the Convention for the protection of submarine cable practically confines the scope of the Convention to peace times.

It is partly having regard to international law that the writer has so long pointed to the desirability of a system of cables connecting the British Empire by direct and independent means—*i.e.* without touching on foreign soil. By such a plan, our communicating links would, without doubt, be legally immune to interruption in war as in peace, unless we, ourselves, were a party to the war—assuming, of course, that the said cable system is not carrying messages opposed to the interests of either belligerent.

Cable Interruptions during Previous Conflicts.—There is clear evidence that cable interruption is a fairly common thing in war time.

There are a number of instances, on which it is not necessary to enlarge; but it may be well to recall a statement made to the House of Lords by the Earl of Carnarvon, who pointed out to the House that in 1878, when there were great alarms as to a Russian war, the Russian Government had taken measures to equip ships for cutting our "Eastern" submarine cables. That this would have been an easy matter is obvious, when we remember that in the Java seas, and the south-west part of the China Sea, there are some 3,500 miles of telegraph cable which lie in less than 50 fathoms of water, and which could be broken by any vessel carrying only the ordinary supply of chain and anchors.

The interruption to the cables to South Africa during the troubles

in the Transvaal may also be referred to. Although working unsatisfactorily at that critical period, the cables managed to serve their purpose to the extent of carrying the messages from Mr. Chamberlain, which saved the situation, and which undoubtedly prevented another Boer war—and possibly even much more serious consequences in Europe. The delay of telegrams, and consequent anxiety, also had the effect of showing the great value of reliable cable routes.

Again, it may not be generally known that when the first shot was fired in the bombardment of Alexandria, the lines were immediately cut by the Egyptians; and thus, for her communication with India, Australia, China, and the East generally, England had to rely on the overland wires, which, crossing various European countries, run through Turkey and Persia to India and the East, or, as an alternative, on the other landline, which, running through Russia and Siberia to the Russian stronghold of Vladivostock on the Pacific coast, forms a roundabout means of communication, via. China, with the Straits Settlements—there meeting lines to Australia and India. Again, some years ago, when great political tension existed with Russia, the cables which united Australasia with the rest of the world were interrupted simultaneously. The sudden cessation of news thereby entailed caused much uneasiness in Australia, and led to the immediate mobilising of the Colonial troops, the manning of batteries, and to the putting in active commission of the Australian defence ships.

As a matter of fact, in the prevailing war, as soon as Turkey joined hands with Germany—the invasion of Egypt might any day have had a most important bearing on our position; that is, if the enemy were to succeed in interrupting any of our "Eastern" cables in India, Australia, and New Zealand. Happily, the "All-British" Pacific cable was in due course repaired, but for some time we were solely dependent on the Eastern Telegraph Company for maintaining cable communication (by way of the Suez Canal) with those parts of the Empire.[1]

Indeed, if we had not chanced to have Naval control, our Mediterranean cables—connecting up with Egypt and India—would have

[1] At other points in the East these lines have been exposed to danger from the depredations of the now defunct *Emden*; but, luckily, that for a long while elusive German cruiser does not seem to have had enough spare time to give to the business.

been cut long ago. In fact, the All-British Pacific line (with its great depths in open ocean) must always be our least vulnerable link with the rest of the Empire.

We have thus received definite assurance during the present war of the high strategic value of the " All-British " Pacific Cable.

Those who attach great value to *neutral* (foreign) cables—in preference to " All-British " cables—should remember that a country that is neutral to-day may become an enemy country to-morrow.

Typical Strategic Cable.—It should be remembered, too, that there is a great strategic advantage in lines being laid right away from our European " friends " and in deep water—where they would not easily be picked up by a cable ship—with few approaches to land, and landing only on British soil.

Private enterprises can scarcely be expected to undertake cables of a strategic rather than commercial order : moreover, they do not do so.

The cables on the Trade routes—through the Mediterranean, etc., are especially liable to interruption—much more so than those in the open ocean, in deep water, far away from foreign countries.

The fact is, the deeper the water, the less prone are cables to disturbance.

Variety of Routes and Variety of Strings.—From a strategic point of view the more routes we have—preferably wide apart—for our cables systems between different branches of the Empire the better.

Further, the more strings we have to our bow the better.

Strategic Value of All-British Lines.—If a country with far-reaching possessions and tributaries wants to rely upon retaining communication with all parts of her Empire, even through a war to which it is not a party, the surest way of doing so is to have her own separate communicating links in no case landing on foreign territory —thereby avoiding the possibility of interruption due to the cable going through a belligerent's waters. This view appears to be shared by so high an authority in international law as Sir Erskine Holland, who in the course of a letter to *The Times* of June 6, 1898, expressed himself as follows : " The moral of all that has been written upon the subject (international law and the cutting of cables) is obviously that drawn by Mr. Charles Bright, viz. : the urgent necessity of a

system of cables connecting the British Empire by direct and independent means—*i.e.* without touching a foreign soil."

Then, again, a system of cables directly connecting up the Empire without touching foreign soil is also highly important—in fact, perhaps, even more important—immediately preceding a war in which we ourselves are a party, the fact being that at this stage it is likely to be highly essential that we hold secret and uninterrupted communication with our Dominions beyond the seas—for gathering up our resources in advance, etc.

TESTATOR'S FAMILY MAINTENANCE IN NEW ZEALAND.

[*Contributed by* JAMES CHRISTIE, LL.M.]

THE statute law authorising the modification of the wills of testators in so far as they fail to provide adequate maintenance for wife, husband, or children of the testator, is now to be found as Part II. of the Family Protection Act, 1908 (under the descriptive heading " Testator's Family Maintenance "). It may be noticed in passing that the Act has now no application to the estates of deceased persons of the native (Maori) race, independent provisions having been made with respect to them by the Native Land Act, 1909.

The statutory provisions are of the briefest kind, and no attempt has been made by the Legislature to define the principles upon which such modification of wills as the statute authorises is to be made. Such principles have, however, been formulated from time to time by the judges of the Supreme Court and Court of Appeal, and may now be said to be well settled.

The present purpose is: (1) Briefly to sketch the history and development of the statutory provisions; and (2) to state the principles which have been adopted by the Courts in determining applications for relief under the Act, as recorded in the reported cases.

Historical Sketch of Legislation.—*The Testator's Family Maintenance Act*, 1900.—The first Act which recognised the testator's duty to provide out of his estate for the maintenance of his legal dependants was the Testator's Family Maintenance Act, 1900, being " An Act to insure provision for Testators' Families." The leading provision of this enactment was in the following terms:

> Should any person die leaving a will, and without making therein adequate provision for the proper maintenance and support of his or her wife, husband, or children, the Court may, at its discretion, on application by or on behalf of the said wife, husband, or children, order that such

provision as to the said Court shall seem fit shall be made out of the estate of the said deceased person for such wife, husband, or children: Provided that the Court may attach such conditions to the order made as it shall think fit, or may refuse to make an order in favour of any person whose character or conduct is such as in the opinion of the Court to disentitle him or her to the benefit of an order under this section.

Applications for relief were required to be made within six months from the date of the grant of probate. In 1903 an amending Act was passed which did not affect in any way the principle of the original Act, but merely made the consequential provision that all death duties payable in respect of the transmission of an estate should be computed as if the order of the Court awarding relief under the Act had formed part of the testator's will.

In 1906 the Acts of 1900 and 1903 were repealed, and were re-enacted with amendments as the Testator's Family Maintenance Act, 1906. By the 1906 Act, the time within which applications for relief could be made was extended from six months from the date of probate to twelve months from the date of probate in New Zealand, with power to the Court or judge in any case to extend the time for a further period of twelve months. Other amendments (by way of additional provisions) effected by the 1906 Act were as follows :—

(1) The Court was specifically authorised to make provision (in awarding relief pursuant to any application) for the payment of a "lump sum" or for "a periodical or other payment." This provision was made in deference to a judicial opinion that under the original Act the Court had no power to award a lump sum. In *Allardice* v. *Allardice*,[1] Mr. Justice Edwards referred to his decision in *Rush* v. *Rush* [2] (the earliest reported case) in the following terms: "In that case I held that the duty on the part of a testator recognised by the Legislature was merely the duty of providing adequate maintenance for those who come within the benefit of the statute, and that the jurisdiction of the Court was limited to making an order which would supply the testator's omission in that respect. Accordingly I held that the Court could not make an order for the payment of a lump sum. This view was not

[1] 29 N.Z.L.R. at p. 972. [2] 20 N.Z.L.R. 249.

held by all the members of the Court, but ultimately it was adopted by a majority of the judges in *Plimmer* v. *Plimmer*."

(2) Unless the Court specifically determines otherwise, the incidence of any order for relief to fall rateably upon the whole estate of the testator, or where the authority of the Court does not extend, or cannot directly or indirectly be made to extend, to the whole estate, then " to " (*sic*) (on) so much thereof as is situate in New Zealand. Specific authority is, however, conferred on the Court to exonerate any part of the testator's estate from the incidence of an order, " after hearing such of the parties as may be affected by such exoneration, as it shall think necessary."

(3) The Court is enabled to fix a periodical payment or a lump sum to be paid by any legatee or devisee to represent or in commutation of such proportion of the sum ordered to be paid as falls on the portion of the estate in which he is interested, and to exonerate such portion from further liability, and to direct in what manner such periodical payment shall be secured, and to whom such lump sum shall be paid, and in what manner it shall be invested for the benefit of the person to whom the commuted payment was payable.

(4) An executor may, within two years from grant of probate, apply to the Court for directions and advice on behalf of infants or persons of unsound mind.

(5) The Act of 1900 rendered invalid all mortgages, charges, and assignments " of or over such provision " (*i.e.* the provision made by order of the Court in favour of any applicant) made before the order of the Court. By the Act of 1906 this provision is extended so as to render invalid such incumbrances or assignments made after the order, but without permission of the Court or a judge thereof.

(6) Court has power to vary order, on alteration of the circumstances of the person or persons benefited by the order.

(7) A right of appeal to the Court of Appeal is conferred on all parties " prejudicially affected " by any order of the Court.

The Testator's Family Maintenance Act, 1906, was repealed in 1908 (as part of the general consolidation of the New Zealand Public Acts) and was re-enacted without material alteration as

Part II. of the Family Protection Act, 1908. S. 33 of that Act contains all the material provisions, and is in the following terms :

Testator's Estate liable for Maintenance of Wife, Husband, or Children. —33 (1) If any person (hereinafter called " the testator ") dies leaving a will, and without making therein adequate provision for the proper maintenance and support of the testator's wife, husband, or children, the Court may at its discretion, on application by or on behalf of the said wife, husband, or children, order that such provision as the Court thinks fit shall be made out of the estate of the testator for such wife, husband, or children.

(2) The Court may attach such conditions to the order as it thinks fit, or may refuse to make an order in favour of any person whose character or conduct is such as in the opinion of the Court to disentitle him or her to the benefit of an order under this Act.

(3) In making an order the Court may, if it thinks fit, order that the provision may consist of a lump sum or a periodical or other payment.

(4) The incidence of the payment or payments ordered shall, unless the Court otherwise determines, fall rateably upon the whole estate of the testator, or, in cases where the authority of the Court does not extend or cannot directly or indirectly be made to extend to the whole estate, then to (? upon) so much thereof as is situate in New Zealand.

(5) The Court shall have power to exonerate any part of the testator's estate from the incidence of the order, after hearing such of the parties as may be affected by such exoneration as it thinks necessary, and may for that purpose direct any executor to represent, or appoint any person to represent, any such party.

(6) The Court shall have power at any time to fix a periodical payment or lump sum to be paid by any legatee or devisee, to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he is interested, and to exonerate such portion from further liability, and to direct in what manner such periodical payment shall be secured, and to whom such lump sum shall be paid, and in what manner it shall be invested for the benefit of the person to whom the commuted payment was payable.

(7) Where an application has been filed on behalf of any person it may be treated by the Court as, and so far as regards the question of limitation shall be deemed to be, an application on behalf of all persons who might apply.

(8) Upon any order being made under this Part of this Act the portion of the estate comprised therein or affected thereby shall be held subject to the provisions of the order.

(9) No application shall be heard by the Court at the instance of a party claiming the benefit of this Act unless the application is made

within twelve months from the date of the grant in New Zealand of probate of the will:

Provided that the time for making an application may be extended for a further period of twelve months by the Court or a judge, after hearing such of the parties affected as the Court or judge thinks necessary, and this power shall extend to cases where the time for applying has already expired, including cases where it expired before the coming into operation of this Act:

Provided also that in such cases the application for extension shall be made within twelve months from the date of the grant of probate.

(10) An executor may apply on behalf of any person being an infant or of unsound mind in any case where such person might apply, or may apply to the Court or a judge for advice or directions as to whether he ought so to apply; and, in the latter case, the Court may treat such application as an application on behalf of such person for the purpose of avoiding the effect of limitation.

(11) The application by an executor, when made on behalf of a person who was an infant at the date of the testator's death, may be made within two years after the grant of probate of the testator's will; otherwise his application shall be subject to the same limitation as that of a party claiming on his own behalf.

(12) No mortgage, charge, or assignment of any kind whatsoever of or over such provision, made before the order of the Court is made, shall be of any force, validity, or effect; and no such mortgage, charge, or assignment made after the order of the Court is made shall be of any force, validity, or effect unless made with the permission of the Court or a judge thereof.

(13) Where the Court has ordered periodical payments, or has ordered a lump sum to be invested for the benefit of any person, it shall have power to inquire whether at any subsequent date the party benefited by its order has become possessed of or entitled to provisions for his proper maintenance or support, and into the adequacy of such provisions, and may discharge, vary, or suspend its order, or make such other order as is just in the circumstances.

Governing Principles applied by the Court in Determination of Applications for Relief under the Act.—*In re Allardice, Allardice* v. *Allardice*[1] (Court of Appeal) may be regarded as the leading case. In this case the principles upon which the Court should act in applications under the Act were exhaustively discussed by the Court, and the rules applied in earlier cases were collected and formulated. The case was carried to the Privy Council, and the

[1] 29 N.Z.L.R. 959.

rules as laid down by the New Zealand Court of Appeal were there accepted and confirmed. The facts of the case were briefly as follows: The testator had been twice married; he left a family of four married daughters and two sons by his first wife: he also left a widow and six children by his second wife. By his will the testator provided for his second wife and her family, but made no provision for the members of his first family. His estate was valued at approximately £20,000. On an original application to the Supreme Court on behalf of three of the daughters and the two sons by the first marriage, the Court declined to make an order in favour of any of the applicants, principally on the ground that none of the applicants was in a condition of want.

On appeal to the Court of Appeal this decision was reversed, and orders were made for payment out of the estate, by equal monthly instalments, of £60 a year to one of the daughters, and £40 a year to each of two other daughters; the order stipulated that part of the general property should be settled to secure the payments, which should be settled on the beneficiaries under the order without power of anticipation. No order was made in favour of either of the two applicant sons, and with reference to their application the Chief Justice remarked as follows:

> As to the sons, I have doubts whether some provision ought not to be made for them. They are, however, physically able. . . . If they had any push, they should, considering their age, have ere this done something for themselves, and to settle money on them now might destroy their energy and weaken their desire to exert themselves.

In his judgment the Chief Justice summarised and formulated the following four rules applied by the Supreme Court in earlier cases:

(1) The Act (*i.e.* Part II. of the Family Protection Act, 1908) is something more than a statute to extend the provisions of the Destitute Persons Act;
(2) The Act is not a statute to empower the Court to make a new will for the testator;
(3) The Act allows the Court to alter a testator's disposition of his property only as far as it is necessary to provide for the proper maintenance and support of wife, husband, or children,

where adequate provision has not been made for their proper maintenance and support by the will of the testator.

(4) In the case of a widow at all events, if not in the case of a widower, the Court will make more ample provision than in the case of children, if the children are physically and mentally able to maintain and support themselves.

Discussing the case then under consideration the Chief Justice proceeded as follows :

The difficulty that has arisen is—when should children be given maintenance and support? I do not know of any attempt that has been made to formulate a rule for the Court's guidance, or if a rule can be formulated. The Act has laid down no rule and has left the decision in every case to the discretion of the Court. What then has the Court to consider? Firstly, I think, the means of the children. "Support," it has been held, at all events in the case of a widow, does not mean mere having supply of food and clothing. It means, it has been held, such kind of maintenance as the widow during the life of her husband has been accustomed to. Another matter that would be considered both as to widow and children is how she or they have been maintained in the past. A child, for example, that has been living on a father's bounty could not be expected to begin the battle of life without means. A child, however, who had maintained her or himself, and had perhaps accumulated means, might well be expected to be able to fight the battle of life without any extraneous aid. But even in such a case, if the fight was a great struggle, and some aid might help, and the means of the testator were great, the Court might, in my opinion, properly give aid. The whole circumstances have to be considered. Even in many cases where the Court comes to a decision that the will is most unjust from a moral point of view, that is not enough to make the Court alter the testator's disposition of his property.

The first inquiry in every case must be—what is the need of maintenance and support?—and the second—what property has the testator left?

In the same case Edwards J., after referring to the amendment of the law effected in 1906, by which the Court was empowered to award a "lump sum" as relief to an applicant under the Act, proceeded in the following terms with reference to the general principles on which the Act should be administered by the Courts :

It is the duty of the Court so far as possible to place itself in all respects in the position of the testator, and to consider whether or not, having

regard to all existing acts and surrounding circumstances, the testator has been guilty of a manifest breach of that moral duty which a just but not a loving husband or father owes towards his wife or towards his children, as the case may be. If the Court finds that the testator has been plainly guilty of a breach of such moral duty, then it is the duty of the Court to make such an order as appears to be sufficient (but no more than sufficient) to repair it. In the discharge of that duty the Court should never lose sight of the fact that at best it can but very imperfectly place itself in the position of the testator, or appreciate the motives which have swayed him in the disposition of his property, or the justification which he may really have for what appears to be an unjust will. Especially is this so in considering the claims of sons. I pointed out in the case of *Plimmer* v. *Plimmer*[1] that there may be reasons which it would be difficult, if not impossible, to put before the Court, which may make it both just and reasonable in a testator to leave a son wholly unprovided for. The case of a son is, of course, merely an example, and it is, I think, an extreme case. In the present case I am satisfied that it has been established that the testator has been guilty of such a breach of the moral duty of a just if stern father towards his daughters as to warrant the order which the Court now makes.

I desire to add that the duty cast upon the Court by this statute is one of extreme difficulty, in the discharge of which the most careful and impartial men may well differ. It is, in my opinion, a duty which can be far better performed by several judges in consultation with each other than by any single judge. It would, I think, be very desirable that except where the parties concerned agree to an order (as is not infrequently the case) every application under this Act should come before the full bench of judges, or at least three of them, in the first instance.

In supplementation of the views of Mr. Justice Edwards as herein expressed I quote from his judgment in *Plimmer's Case*[2]:

I do not think that the statute was intended to enable the Court substantially to make such a new will for the testator as it considers upon the evidence before it that the testator ought to have made. I do think that the powers conferred upon the Court ought to be exercised with very great caution. In the case of a widow the difficulties that surround the exercise of these powers are comparatively small. There are few persons who will not think that every testator, whatever may have been the difference between his wife and himself, ought to provide for his widow in a reasonable manner, unless she has clearly been guilty of some grave breach of the law or of conventional morality. The statute provides

[1] 9 *Gazette Law Reports* 10. [2] *Ibid.*, at p. 21.

that, if she has, such matter may be brought before the Court in answer to her claim. In the case of adult children the case is far more difficult. No one can ascertain, and it is quite incapable of proof, what circumstances may justify a parent in disinheriting his child. Habitual disrespect, an evident determination not to devote himself to useful pursuits but to live upon the proceeds of his father's labours rather than upon his own, or an idle, useless life, may well justify a father in leaving his son wholly unprovided for by his will, and this may really be in the interest of the erring son, for there are many who under the stress of necessity may become useful and fairly reputable members of society, who cannot withstand the temptations which money affords. Yet it would be quite impossible to bring such matters before the Court in a tangible shape. *It is of the breath of family life that the family skeleton be kept in the family cupboard.*

Mr. Justice Cooper, in his judgment in *Allardice's Case*, also makes certain general observations on the principles which in his opinion should be applied by the Court in the construction of the statute. He says :

The provisions of Part II. of the Family Protection Act do not permit the Court to alter the testamentary disposition of the property of a deceased person in any other way than to order such provision (either by a lump sum or a periodical payment) as the Court thinks fit to be made out of the estate of any deceased person for the proper maintenance and support of the particular testator's wife, husband, or children, when such wife, husband, or children shall have been left surviving the testator without such testator having made in his will adequate provision for their proper maintenance and support. . . . What is an adequate provision for the wife of a testator is a question which depends (1) upon the station in life of the parties ; (2) upon the age, health, and general circumstances of the wife ; (3) upon the means possessed by the testator at the time of his death ; and (4) upon any property or means which the wife possesses in her own right. What would be an adequate provision for the wife of an artisan or a labouring man who died possessed of a comparatively small estate would be inadequate for the wife of a prosperous tradesman or wealthy merchant or professional man. What would be an adequate provision for the wife of a man who died possessed of an estate of £20,000 would be inadequate for the wife of a millionaire. So also what might be considered sufficient for a woman in the prime of life, of robust health and capable in mind and body, might be insufficient for a woman of advanced years or in ill health. These observations, in my opinion, state a reasonable rule applicable to the claims of the widow of a testator. I

think that the widow of a testator may stand in a different position to a widower, or children of a testator. In the present case we have only to consider the position of the children. In my opinion it is impossible to lay down, except in very elastic terms, any general rule in such a case, for many factors have to be considered. The condition of life of the testator and the children, the sex, age, and health of the children, whether, if daughters, they are married, or, if sons, they are of sufficient health and strength to earn a reasonable maintenance for themselves or those dependent upon them in the condition of life in which they have been brought up, are necessary factors, as no doubt also to some extent is the value of the property left by the testator. But the Court has no jurisdiction to do more than to secure an adequate provision according to the condition of life of the children, measured to some extent by the estate left by their parent, and guarding also the interests of those who have an equal claim upon the particular testator but who have been provided for in the testator's will. I repeat that we have no power to recast the testator's will, or to redress inequalities, or fancied injustices, but only to secure a sufficient provision for the proper maintenance and support of those children of the testator who have been left by him without proper and adequate means of support. This general rule is, I think, the governing principle. Its application depends upon all the circumstances of each particular case.

The rules applied in *Allardice* v. *Allardice* have not been questioned, and subsequent cases have been decided by the application of those rules. Difficulties have arisen, and doubtless will continue to arise, not because the principles are not well understood, but because of the practical difficulty of applying abstract rules to concrete cases. Of the reported cases the following—some of which are earlier, others later, than *Allardice's Case*—are worthy of notice by reason of the exceptional circumstances, either of the beneficiaries under the will or of the applicants for relief.

Illegitimate Children of Testator.—In *Worthington* v. *Ongley and Kelly* [1] the testator (whose estate was valued at £500) left £100 to each of his two illegitimate children, and the residue to his widow and their legitimate children. Application was made by the widow that the legacies to the illegitimate children be taken away in favour of herself and the legitimate children. The Court (Stout C.J. presiding) held that in the absence of proof that the illegitimate children had support from some other quarter, the order asked for

[1] 29 N.Z.L.R. 1167.

could not be made. The ground of the decision is made clear from the following remarks of the Chief Justice :

> The testator had a moral duty to support his illegitimate children, and I do not consider that they should be left penniless. If it had been proved that their mother had means, the case would have been different. They have no one to rely on but their mother, and there is no information about her means. It has not been suggested that she has any, or that she has well-to-do relatives who can or will support her. Further, there is no information as to the means of the relatives of the widow other than at present she is being helped by her father. It may be that she has relatives that can assist her and that the illegitimates have no one that can assist them. Before the Court would interfere in such a case it would have to be clear that the illegitimates had support from some quarter. That does not appear. It is assumed by the applicant that the mere fact that illegitimates have got part of the estate entitled her to ask that their part should be given to her. I am of opinion that this is not sufficient ground.

Age of Applicant.—*Nosworthy* v. *Nosworthy*.[1] This was an application by a widower for relief under the Act from the estate of his deceased wife. By the terms of her will the testatrix (whose estate was valued at £1,950) left a legacy of £200 to the Methodist Church, one of £500 to the Marlborough High School, and the residue to her husband. The husband had property of his own valued at £480, and was in receipt of an annual salary of £200. He was seventy-six years of age. On the ground that he could not long continue to earn his salary, and that without it he was not adequately provided for, an order was made charging the legacies with an annuity of 4½ per cent. to be paid by the Church and School Board respectively, to the applicant, by half-yearly payments.

Application by Able-bodied Sons.—(*a*) In *Munt* v. *Findlay*[2] application by two sons of the testator was refused on the ground that the Act could be invoked only in favour of a widow or children in need of maintenance. The applicants are described in the judgment as " young and vigorous men in constant employment in connection *with the business* in which they are shareholders." It appeared in the evidence that the applicants had respectively £750 and £1,000 worth of shares in the business, and that it was paying

[1] 26 N.Z.L.R. 285. [2] 25 N.Z.L.R. 488.

dividends. In dismissing the application (in so far as it related to the sons in question), Stout C.J., after reviewing the facts, said :

Under such circumstances I do not think that they come within the terms of the Act. They have provision for their maintenance now, and unless the Act is to be so construed as to enable the Court to grant maintenance to children whatever their means may be, they do not come within the terms of the statute. The will may be, and no doubt is, unfair to them, but, as has been said on more than one occasion, this Court has not the authority to interfere with the decision of a testator in his power of disposing of his property save only if his wife or children require maintenance.

(*b*) The testator in *Ray* v. *Moncrieff and another* [1] left an estate valued at £10,000. The applicant was the only son of the testator, and had been left the interest on £1,000 for life expectant on the death of the testator's widow. The applicant was forty-four years of age, and an able-bodied labourer. The evidence showed that he was a chronic drunkard. His application was dismissed. It was contended by counsel that the applicant should be regarded as a man suffering from a chronic disorder. To this contention Mr. Justice Chapman replied as follows :

I cannot make him an allowance out of property belonging to other members of the family on the assumption that this is to be recognised as a fixed condition, as if the applicant were maimed or insane. I always find myself brought back to the point that he is an able-bodied man. When he gets money he drinks, and I cannot help seeing that in whatever way any allowance might be safeguarded this propensity would not be cured or lessened by treating the applicant as incapable of restraining himself. The statute does not contemplate assistance to a daughter-in-law or to grandchildren, though the Court often considers them when ascertaining the needs of a son, but it would be a novel use of the powers of the Act to relieve the son of his burdens when the only result would be to set free his resources to be spent in drinking. The Court in these cases is asked to make good some failure on the part of the testator to perform his duty. . . . I can only say that it would be an unwise and unjust application of the powers conferred on this Court to take away from others (perhaps from the applicant's own children) property which belongs to them in order to assist an able-bodied man with the habits of the plaintiff.

Applications by Widow.—(*a*) *Rush* v. *Rush* [2] is the earliest reported case under the Act of 1900, and was decided by Mr.

[1] 1917 N.Z.L.R. 234. [2] 20 N.Z.L.R. 249.

Justice Edwards. The expression of the governing principles may be somewhat modified by the judgments in *Allardice* v. *Allardice*; the provision made by the Destitute Persons Act is not to be regarded as the standard of a testator's obligation to his wife and children; adult children (particularly in the case of daughters) may have a claim even although they may be *capable* of supporting themselves; on the whole, however, the principles expressed by Mr. Justice Edwards are in conformity with later cases. Dealing more particularly with the Act as it applies to the widow of a testator, his Honour says:

The position of the widow, however, differs from that of the testator's adult children both in morals and in law. During the testator's lifetime he was bound by law to support his wife in a manner suitable to their station in life. If he had deserted her and refused to support her, an order to the extent of £1 per week could properly have been made against him by a magistrate under the Destitute Persons Act. . . . On the other hand the testator was not under any legal obligation to support his adult children unless they came within the provisions of the Destitute Persons Act, and that is not the case here. . . . I think that the Act of 1900 should be treated, in practice at all events, as being primarily for the benefit of those who would have had a claim against the testator if he were living. I do not say whether or not the statute is limited in its application to these persons, but however this may be, I certainly consider that where the provisions of the statute of 1900 are invoked such persons are entitled to preference over those who may possibly come within the statute, but who could have had no claim against the testator if he were living. The Legislature has entrusted to the Court the duty of seeing that a testator does not sin in his grave by leaving those whom nature has made dependent on him unprovided for, and this duty is properly discharged by providing in the first place for those who were dependent upon the testator, and to whom the law gave rights against him, in his lifetime. Adult children capable of supporting themselves may come within the statute of 1900. As to this I express no opinion. It would, however, I think require a very strong case to justify the Court in making an order under that statute in favour of such a child, overriding the will of the testator.

The testator's widow had therefore the first claim upon him. I think that the claim must be considered to be at least as great as she would have had against him if he had failed to perform his duty of maintaining her in his lifetime.

The testator's duty, however, was merely to provide for an adequate

maintenance for his wife during her lifetime. It did not extend to providing her with a fund which she could give to others at her death.

(*b*) *In re Heagerty, Heagerty* v. *Considine*[1] the testator, whose estate was valued at £22,000, left a widow, aged fifty-five years, without children. To his widow he left a legacy of £100; he also gave her, during widowhood, a house and land worth £50 a year, and also £300 a year. The residue of his estate he left to the children of a brother, none of whom is resident in New Zealand. The Court allowed to the widow an additional income of £100 a year, to be paid out of the income of the residuary estate. "I have to see," said the Chief Justice, "that the widow does not have her mode of living reduced by the death of the testator."

Application by Widower.—In *Green* v. *Green*[2] and *Golightly* v. *Jefcoate and others*,[3] application was made by a widower for whom no provision had been made by the will of the deceased wife. In the first case there was evidence of positive misconduct on the part of the plaintiff; in the second case, although the parties had been living apart, there was no evidence of misconduct. In the first case no order was made; in the second case an order was made for payment to the plaintiff of 6*s*. a week. If the husband and wife had been living together, and she had been maintaining him, the duty of the wife to provide for her husband after his decease would, in the opinion of the Court, have been greater.

In *Green* v. *Green* the judge remarked that the Act was passed with a view of enabling the Court, where the testator had been guilty of a moral wrong in not providing for a near relative, to rectify that wrong. Having regard to the misconduct of the plaintiff, his wife was under no such obligation. "If the husband has a number of sons who can be called upon by law to provide for him, he is enabled to maintain himself. If he cannot maintain himself, his remedy is to get his sons to maintain him, and he has no claim on the assets of the wife."

In *Golightly's Case* the applicant's necessities were greater. He was bedridden, his only income was an old-age pension of 10*s*. a week, and his sons being married had, in the opinion of the Court, "obligations which would take precedence over the obligation to maintain their father." In such "border-line" cases the discretion of the presiding judge must be the determining factor.

[1] 1916, N.Z.L.R. 905. [2] 33 N.Z.L.R. 81. [3] *Ibid*, 91.

Applications by Adult Unmarried Daughters.—The Court has shown a tendency to consider favourably applications under the Act on behalf of unmarried daughters or of married daughters in indifferent circumstances. This tendency is illustrated in *Allardice's Case*, and also in the following cases :

(*a*) In *Rowe* v. *Lewis and another* [1] the testator left an estate valued at £25,900 ; his residuary estate (amounting to £11,000) was left to the Dr. Barnardo Homes : the only provision made for his daughter (the applicant) was a life interest (expectant on the death of the testator's widow) in a property producing in rentals about £150 a year : the widow was seventy-three years of age and in good health. The Court made an order in favour of the applicant for the payment to her of £1 10*s.* a week until the death of the testator's widow, such payment to be charged on the residuary estate.

(*b*) The testator in *Severn* v. *The Public Trustee* [2] left an estate valued at £5,754 ; he gave £250 each to his son and daughter by a former marriage ; he gave a life interest in the residue to his widow with remainder to her child. Application for relief was made by the daughter. It would appear from the judgment that the Court was inclined to consider the ethics of the case, as well as the strict needs of the applicant.

In giving judgment in favour of the applicant his Honour the Chief Justice adverts to the assistance afforded to the testator in the accumulation of his property by his first wife and her children. He does not make such considerations the ground of his decision, but obviously considers them a factor to be taken into account in the exercise of his judicial discretion. He says :

> The foundation of the property of the deceased was laid by his first wife, who by hard work and thrift, and with the aid of her children, began the accumulation of the property. Most of the property left belonged to his first wife, but she made her will leaving all to him if he survived her. The son asked no aid from the Court. The daughter, the plaintiff, relied on the fact that she was not well provided for. . . . I think the plaintiff is entitled to some allowance. I fix her allowance at £2 15*s.* per month. This will allow the corpus of the estate to be preserved for the infant child ; or, should the child die, for the widow. This allowance is in addition to the £250 left by will to the plaintiff, and is only for her life.

[1] 26 N.Z.L.R. 769. [2] 1916, N.Z.L.R. 711.

(*c*) The applicants in *E.* v. *E.*[1] were the testator's daughters by his first marriage. The testator left all his property (approximately valued at £4,922) to his wife absolutely with an expression of confidence that she would make adequate provision for his daughters.

The estate of testator when added to the widow's own property was insufficient to provide more than reasonable support for herself and her infant illegitimate son by the testator. The daughters were aged twenty-two and twenty-four respectively, were well educated, and had for some years been earning their own living. Each had property valued at about £400. There was some evidence that their health was delicate. An order was made in the Supreme Court allowing each daughter £600 out of the estate. On appeal by the widow to the Court of Appeal this order was discharged and an order to the following effect was substituted: Two sums, each of £600, to be paid out of the estate to the Public Trustee, upon trust for investment in the common fund of the Public Trust Office; income from both funds to be paid to the widow during her life or until her son should attain the age of twenty-one years or should die (whichever event may first happen); on her death, or on the son attaining the age of twenty-one years or dying under that age (whichever first happens) the income from one sum to be paid to A (one of the applicants) (during spinsterhood); the income from the other sum to be paid to B (the other applicant) (during spinsterhood); on trust of income in favour of either daughter ceasing, income to be paid to the other daughter (during spinsterhood); subject to foregoing trusts, to hold one sum in trust for A, and other in trust for B. Power reserved to vary or suspend any of the terms of the order.

[1] 1916, N.Z.L.R. 786.

PARTNERSHIP LAW IN THE EMPIRE.

[*Contributed by* James Edward Hogg.]

In the law relating to partnership throughout the Empire there are no such sharp distinctions as in the case of company law, by reason of any difference between statute law and non-statute law, or between the English common law and the civil law. For the most part, so much of the law of partnership as is contained in statutes has found its way there through codification, and the portion that has been newly created by statute is small. The principles underlying both English and non-English law in this sphere are the same, and the new matter introduced for the first time into English law by express statutory enactment has mostly had its source in the civil law.

The general law of partnership is fairly uniform throughout the Empire. The principal differences in substance are due to differences between English law and the civil law. The differences in form depend mostly on whether the rules of law have in any particular jurisdiction been codified or not, and if codified what model has been followed. This body of general law has been supplemented, but not uniformly throughout the Empire, by two important additions—relating to limited partnership and registration of partnerships—tending to bring the ordinary English law into line with the civil law. Some modification of the ordinary law of partnership has also been introduced in those jurisdictions where a Companies Act on the English model is in force, for by these Companies Acts partnerships consisting of more than a certain number of persons are prohibited, and any such large partnership must become a corporate body. There is, however, no such prohibition contained in the Companies Acts of Nova Scotia or St. Lucia, although those statutes are modelled on the English Acts.[1]

[1] See St. Lucia—Commercial Code (1916), "Companies"; Nova Scotia—*Jour Comp. Leg.* xvii. 103, "Company Law in the Empire."

Oversea Legislatures.—There is not, as is the case with company law in some of the oversea Dominions, any conflict or confusion by reason of both central or federal legislature and provincial or State legislature dealing with the subject of partnership. There might have been some question with respect to the prohibition of large partnerships in Canada, where Companies Acts have been passed by both Dominion and provinces, but the Dominion statute does not contain the prohibition. In Canada and Australia partnership is a subject of provincial and State legislation respectively. In South Africa, it is not a matter for provincial legislation since the Union of South Africa came into existence, but what statutes there were up to 1909 still remain in force in the absence of any Union legislation.

The English Codification.—Partnership law has the distinction of being one of the four branches of commercial law that have been codified for the United Kingdom. In 1890 [1] a codifying statute was enacted, which did for the whole of the United Kingdom with respect to the law of partnership what in 1882 had been done for the law of negotiable instruments. So little had this branch of law been the subject of statutory enactment, that it was only necessary to repeal two enactments affecting England, Ireland, and Scotland, and one affecting Scotland alone. Bovill's Act [2] (which enabled loans to be made to a firm without the lender incurring risk as a partner) is now replaced by provisions in ss. 2 and 3 of the 1890 Act, and the sections from the Mercantile Law Amendment Acts [3] (as to continuing guarantees and changes in firms) are replaced by s. 18 of the 1890 Act. It is important to notice that the new Act did not purport to assimilate the law of Scotland to that of England, but on the contrary made express provision on points in which the law of the two countries had previously differed, such as the juridical personality of a firm, the liability of partners for the firm's obligations, the rules of bankruptcy, etc.[4]

This code, representing the general body of partnership law as it stood in 1890, has formed the basis of statutory enactment in at least twenty-three of the oversea Dominions, and in others

[1] Partnership Act, 1890 (53 & 54 Vict. c. 39).

[2] An Act to amend the law of partnership (28 & 29 Vict. c. 86).

[3] 19 & 20 Vict. c. 60, s. 7 (Scotland); 19 & 20 Vict. c. 97, s. 4 (England and Ireland).

[4] See ss. 4, 9, 23, 47.

has been impliedly made part of the local law. In some cases the English Act of 1890 has been simply transcribed almost literally, in others its provisions form part of larger statutes.

In most of the Australasian jurisdictions the English Act of 1890 has been enacted without addition, viz. in Queensland,[1] Tasmania,[2] South Australia,[3] New South Wales,[4] Western Australia,[5] Fiji,[6] and Papua.[7] So in some of the West Indies (Bermuda,[8] Bahamas,[9] British Guiana,[10] Trinidad and Tobago [11]) and in Newfoundland,[12] Gibraltar,[13] and Hongkong.[14] Any further enactments on the subject of partnership law are (as in England) contained in separate statutes. Most of these are referred to subsequently. In Hongkong a special statute deals with Chinese partnerships,[15] and there is nothing corresponding with this in other jurisdictions. The British Guiana statute calls for special mention. The basis of the local jurisprudence is Roman-Dutch law, and accordingly the statute has in several places been drafted with a view to the law of Scotland, where this differs from the law of England as enacted in the Partnership Act, 1890. Thus, the liability of a partner during his lifetime for the debts of the firm is made "joint and several" (s. 11) as in Scotland, instead of merely "joint" as in England. Nevertheless, subject to other enactments, "the rules of equity and common law applied by the Chancery Division of the High Court of Justice in England in cases relating to partnership shall be in force and apply to cases in this colony" (s. 47).[16]

[1] Partnership Act of 1891 (55 Vict. No. 7).
[2] *Ibid.* 1891 (55 Vict. No. 3).
[3] *Ibid.* 1891 (No. 506).
[4] *Ibid.* 1892 (55 Vict. No. 12).
[5] *Ibid.* 1895 (59 Vict. No. 23).
[6] Partnership Ordinance, 1910 (No. 23).
[7] *Ibid.* 1912 (No. 39).
[8] Partnership Act, 1902 (No. 10).
[9] *Ibid.*, 1904 (4 Ed. VII. c. 37).
[10] Partnership Ordinance, 1900 (No. 20).
[11] *Ibid.* 1913 (No. 30).
[12] Partnership Act, 1892 (Consol. Stat. 1892, c. 97).
[13] Partnership Ordinance, 1895 (No. 11).
[14] *Ibid.* 1897 (No. 1).
[15] Chinese Partnerships Ordinance, 1911 (No. 53). Mr. C. G. Alabaster gave particulars of the Ordinance in this Journal, vol. xvii. p. 19.
[16] The co-existence of these two enactments (ss. 11, 47) in the British Guiana Statute of 1900 illustrates the kind of difficulty which the writer of a recent article in this Journal (xvii. p. 210) seems to anticipate as the possible result of the "experiment" in British Guiana—the abrogation of Roman-Dutch in favour of English law. In the case of the Partnership Ordinance the draftsman, in adapting the English Act of 1890, has omitted to notice that if the partner's liability is made joint and several once for all, further express provision for a several liability is unnecessary, so that ss. 9 and 12 should not have been followed (see ss. 11 and 14 of the British Guiana Ordinance).

In New Zealand [1] and Victoria,[2] in six Canadian jurisdictions (North-West Territories, Yukon, Alberta,[3] Saskatchewan,[4] British Columbia,[5] Manitoba [6]) and in St. Lucia,[7] the English Act of 1890 has been supplemented by other enactments, and these have been in most cases re-enacted as a single consolidated statute, so that in each of these jurisdictions the existing statute (in some cases subsequently amended) contains the provision of the English Act of 1890 and also provisions on the subject of limited partnerships or registration of partnerships—sometimes both. The St. Lucia statute calls for special mention on the same grounds as that of British Guiana already referred to. The basis of St. Lucia law is French, and it is in view of this, apparently, that the liability of partners has been made "joint and several" instead of merely "joint," following the rule in the civil law, but (just as in British Guiana) without making the necessary consequential alterations in adapting the English Act of 1890.

In Ceylon, Straits Settlements, and British Honduras, the English Partnership Act, 1890, forms part of the local law, though not actually placed on the local statute books. In British Honduras [8] English law is in force, as it stood on January 1, 1899. In Ceylon [9] and Straits Settlements [10] the partnership law of England is to apply locally as though each case "had to be decided in England." It seems clear that, notwithstanding the above enactments, the supplemental law as to limited partnerships and registration of partnerships names, introduced by statute in England in 1907 and 1916, is not applicable to Ceylon and Straits Settlements.

The Indian Codification.—Prior to the passing of the Partnership Act, 1890, in the United Kingdom, a codification of partnership law had been effected for British India, as part of the Indian Con-

[1] Partnership Act, 1908 (No. 139).

[2] *Ibid.* 1915 (No. 2704).

[3] Partnership Ordinance, 1899 (c. 7); this statute of the North-West Territories applies also to Alberta and Yukon.

[4] Partnership Act (Rev. Stat. 1909, c. 143); Stat. L. Am. Act, 1915, s. 23.

[5] *Ibid.* (Rev. Stat. 1911, c. 175); 1914, c. 55.

[6] *Ibid.* (Rev. Stat. 1913, c. 151); 1915, c. 51; 1916, c. 82.

[7] Commercial Code (1916), Arts. 20–72.

[8] Consol. Laws (1914, c. 8), "Application of English Law."

[9] "An Ordinance to extend the introduction . . . of the Law of England . . ." (1866, No. 22).

[10] Civil Law Ordinance, 1878 (No. 4), s. 6.

tract Act, in 1872.[1] This codification is in substance to the same effect as the English Act of 1890, but is differently drafted and is contained in half the number of sections. One important difference relates to the liability of partners. By s. 249 of the Indian statute, "Every partner is liable for all debts and obligations incurred while he is a partner. . . ." This appears to mean that a partner's liability is joint and several, as in the civil law. The enactment in the English Act (s. 9) is "Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts," etc., provision being made in the same section for the several liability of his estate on his death, and also (s. 12) for several liability in cases of wrong-doing by co-partners. The present form of s. 9 of the English Act appears to be the result of the case of *Kendall* v. *Hamilton*.[2]

The Indian Contract Act has been placed on the statute books of the four Federated Malay States,[3] and the partnership provisions transcribed without alteration. The Indian Act has also been made applicable to East Africa [4] and Uganda.[5] In these two Protectorates and the Malay States, therefore, the general law of partnership will be found in the Indian Contract Act, ss. 239–66.

Uncodified English Law.—In all other oversea Dominions in which English law prevails the law of partnership is as yet uncodified, though of course in substance and for the most part the provisions of the Partnership Act, 1890, express the rules of law that are in force. In some jurisdictions no statute whatever seems to have been passed on the subject of partnership, as for instance, Grenada, Falkland Islands, the Gambia, Northern and Southern Nigeria, and Sierra Leone. In other cases there is some legislation, but only in the Leeward Islands [6] and St. Vincent [7] does it relate to partnership in general; in these two jurisdictions the provisions of Bovill's

[1] Indian Contract Act (1872, No. 9). ss. 239-66.

[2] (1879), 4 A.C. 504.

[3] Selangor—Contract Enactment, 1899 (No. 30), ss. 239–66; Perak—1899, No. 22; Pahang—1900, No. 1; Negri Sembilan—1899, No. 23.

[4] East Africa O. in C. 1897, Art. 11 (*b*). This Order in Council is repealed by the East Africa Order in Council, 1902, but apparently without affecting the Indian Acts previously applied.

[5] Order of Secretary of State (1899), under Africa Order in Council, 1892, Art. 3; see Ennis and Carter's *Laws of Uganda*, pp. 129–31

[6] Partnership Act, 1888 (No. 1 of 1914 ed.).

[7] *Ibid.*, 1874 (No. 386).

Act have been adopted. In the remaining jurisdictions—four Canadian (Ontario, Nova Scotia, New Brunswick, Prince Edward Island) and two West Indian (Jamaica and Barbados)—the only matters dealt with are limited partnerships and registration of partnerships. These subjects will be referred to later on.

Non-English Law.—The common law is not in force in Scotland, Ceylon, British Guiana, St. Lucia; but the extent to which partnership law has by statute become assimilated to English law has already been referred to. Other jurisdictions in which the general law of partnership is not affected directly by English legislation are: Quebec, the Union of South Africa, Southern Rhodesia, Mauritius, Seychelles, Egypt, and Cyprus.

In Quebec the general law is to be found in the Civil Code of Lower Canada (Arts. 1830–900). In the Union of South Africa and Southern Rhodesia the rules of the Roman-Dutch law have not been reduced to a code, and the only legislation there is relates to limited partnerships and registration. In Mauritius and Seychelles for the most part the subject is governed by the French codes. In Egypt and Cyprus the fundamental law is Mohammedan, and in Cyprus there appears to be no legislation on English lines. In Egypt[1] the French codes have largely served as models for the Codes applied by the mixed Courts.

The principal points on which the general non-English law of partnership—the civil law—differs from the English or common law are these: a partner's liability under the civil law is joint and several; partnerships *en commandite* can be formed, by which the advantages of limited liability are secured to sleeping partners; a partner's share can be assigned; a partnership has a separate legal personality, which can only be secured in English law by formally making the partnership a corporation. The nearest approach to partnerships *en commandite* or limited partnerships in the general English law is to be found in the provisions of Bovill's Act, now forming part of the various codified statutes.

Limited Partnerships.—As already stated, limited partnerships exist only in English law by virtue of some express statutory enactment, though partnerships *en commandite* are part of the general law of partnership under the civil law. Nevertheless, in several jurisdictions where the common law is not in force these partner-

[1] See Code de Commerce, Arts. 25–71

ships are expressly sanctioned, either in fundamental codes or ordinary statutes. Thus, in Quebec [1] and Egypt [2] they are referred to in the codes, in parts of the Union of South Africa (Cape of Good Hope [3] and Natal [4]) they are the subject of special statutes, Scotland is covered by the Limited Partnerships Act, 1907 (which applies to the whole of the United Kingdom), and this Act is also embodied in the Commercial Code of St. Lucia.[5] The Egypt code is of course taken from the French code. In the cases of Quebec and South Africa there is some trace, but not so much in the cases of Scotland and St. Lucia, of the fact that the basis of local law is not the common law. Omitting the case of Egypt, it will be found that throughout the Empire (Limited Partnership Acts being in force in twenty-four jurisdictions) there are only two types of enactment, one conforming to the English Act of 1907, and the other to the Quebec code—or rather to the Canadian model from which these articles of the Quebec code are taken.[6]

Besides Scotland and St. Lucia, the English Act of 1907 has been followed in Western Australia,[7] Tasmania,[8] Hongkong,[9] and Barbados [10]; in all these the local statutes are nearly transcripts of the English model, and it will be sufficient to mention a few points on which the English differs from the Canadian model. The "limited" partners of the English Act are in other jurisdictions called "special" partners. Whilst the English Act contemplates a limited partnership carrying on banking business, and also restricts the number of persons who may form a limited partnership, in most cases of statutes framed on the Canadian model banking and insurance are prohibited, but there is no restriction as to numbers (except so far as this may be enforced by Companies Acts). The ordinary law of partnership obtains under the English Act, so that

[1] Civil Code of Lower Canada, Arts. 1871–87; Rev. Stat. 1909, Arts. 7443–5.

[2] Code de Commerce, Arts. 25–71.

[3] Special Partnerships Limited Liability Act, 1861 (No. 24); Amending Act of 1906 (No. 12).

[4] Special Partnerships Limited Liability Act, 1864 (1865, No. 1).

[5] 1916, Arts. 64–72.

[6] The original statute seems to have been one passed in 1849 by the legislature of the then united province of Canada (12 Vict. c. 75).

[7] Limited Partnerships Act, 1909 (No. 17).

[8] *Ibid.*, 1908 (8 Ed. VII. No. 6).

[9] Limited Partnerships Ordinance, 1912 (No. 18).

[10] Limited Partnerships Act, 1913 (No. 11).

an action against the partnership as a whole does not differ from an action against an ordinary partnership; in some of the statutes on the Canadian model actions may be brought against the general partners only, as though there were no special partners. Under the English Act the general partners are "liable for all debts and obligations of the firm"; under many statutes on the Canadian model the general partners are "jointly and severally responsible as general partners are by law." In jurisdictions where the liability of partners is not by statute made joint only during their lifetime, it may be that this reference points to a joint and several liability in the case of ordinary partnership.

In three Canadian provinces (Ontario,[1] Nova Scotia,[2] New Brunswick [3]), in Newfoundland,[4] and in three of the West Indies (Jamaica,[5] Bahamas,[6] Bermuda [7]), the limited partnership enactments are not contained in any statute dealing with the general law of partnership, even where the English codification has been followed.

In six Canadian jurisdictions (Manitoba,[8] British Columbia,[9] Saskatchewan,[10] North-West Territories,[11] Alberta, Yukon), and New Zealand,[12] the enactments relating to limited partnership are included in the statute dealing with the general law of partnership; the expression used is, however, "special" partnerships.

Registration of Partnerships.—The system of requiring partnerships to be registered, though only introduced into the United Kingdom in 1916, has been in force in Australia since 1892 and in Canada since, or perhaps before, 1876. The principles of the Canadian system is that partnerships as such must be registered in

[1] Limited Partnerships Act (Rev. Stat. 1914), c. 138.

[2] Rev. Stat. 1900, c. 144, "of limited partnerships and sureties to firms."

[3] Consol. Stat. 1903, c. 144, "respecting partnerships," ss. 1–19; amended 1906, c. 7, 1915, c. 32.

[4] Consol. Stat. 1892, c. 98, "of limited partnerships."

[5] An Act to authorise limited partnerships throughout the Island, 16 Vict. c. 21; mended, Law 16 of 1892.

[6] Partnership Limited Liability Act, 1861 (24 Vict. c. 13).

[7] Limited Partnership Act, 1883 (No. 24).

[8] Partnership Act (Rev. Stat. 1913, c. 151), ss. 61–80.

[9] *Ibid.* (Rev. Stat. 1911, c. 175), ss. 48–66.

[10] *Ibid.* (Rev. Stat. 1909, c. 143), ss. 59–77.

[11] Partnership Ordinance, 1899 (c. 7), ss. 47–66. This statute is also in force in Alberta and Yukon.

[12] Partnership Act, 1908 (No. 139), ss. 48–67.

order to carry on their business legally. The principle of the Australian system, with which the new English Act accords, is that registration is only necessary where business is carried on in a name which is a business—as distinguished from a private—name. Under both systems an individual using a business name must also register.

In New Brunswick,[1] and also in St. Lucia,[2] all partnerships without qualification must be registered. In Ontario,[3] Quebec,[4] Manitoba,[5] British Columbia,[6] Saskatchewan,[7] Alberta,[8] Yukon,[9] and Nova Scotia,[10] trading and manufacturing, etc., partnerships must be registered, and also individuals carrying on similar businesses in a firm-name. So in Prince Edward Island,[11] with the addition that the partnership is not legally constituted until it is registered, and with the exception of banking and insurance business.

In New South Wales,[12] Queensland,[13] Tasmania,[14] Victoria,[15] Western Australia,[16] and South Australia,[17] and also in Natal,[18] all persons (whether partnerships or individuals) who carry on business under a firm-name must register, but the Acts do not require every partnership as such to register. This is also the principle of the recent English Act[19] (which applies throughout the United Kingdom), "business-name" being used in this Act as the equivalent of "firm-name" in the Australian Acts.

The above nineteen jurisdictions appear to be the only parts of

[1] Consol. Stat. 1903, c. 144, "respecting partnership," ss. 20–30.
[2] Commercial Code (1916), Art. 20.
[3] Partnership Registration Act (Rev. Stat. 1914, c. 139).
[4] Rev. Stat. 1909, Arts. 7,437–42; 1915, c. 72.
[5] Partnership Act (Rev. Stat. 1913, c. 151), ss. 48–60.
[6] *Ibid.* (Rev. Stat. 1911, c. 175), ss. 67–82.
[7] *Ibid.* (Rev. Stat. 1909, c. 143), ss. 47–58.
[8] An Act respecting partnerships (1908, c. 5).
[9] An Ordinance respecting partnership (Consol. Ordin. 1914, c. 69).
[10] Rev. Stat. 1900, c. 143, "of the registration of partnerships."
[11] An Act relating to partnership (1876, c. 8).
[12] Registration of Firms Act, 1902 (No. 100).
[13] *Ibid.* 1902 (2 Ed. VII. No. 12); Amending Act of 1912 (3 Geo. V. No. 27).
[14] Registration of Firms Act, 1899 (63 Vict. No. 34).
[15] Partnership Act, 1915 (No. 2704), ss. 49–67, re-enacting the Registration of Firms Act, 1892.
[16] Registration of Firms Act, 1897 (61 Vict. No. 14); amending Act, 1899 (63 Vict. No. 26).
[17] Registration of Firms Act, 1899 (No. 723).
[18] *Ibid.*, 1906 (No. 35).
[19] Registration of Business Names Act, 1916 (6 & 7 Geo. 5, c. 58).

the Empire in which registration of partnerships is required. In South Africa there are enactments (only in Transvaal [1] and Southern Rhodesia [2]) requiring certain businesses and transfers of business to be registered, which perhaps have to some extent the same objects as registration of business or firm-name.

Miscellaneous Enactments.—There are some miscellaneous enactments relating to partnership in a few jurisdictions, of which the most important are those relating to mining partnerships. Thus in Ontario,[3] British Guiana,[4] New South Wales,[5] and New Zealand,[6] these are placed on a special footing. In Newfoundland [7] a special statute relates to "compromises of partners and joint debtors." In Nova Scotia [8] s. 4 of the Mercantile Amendment Act, 1856, has been introduced.

Conclusion.—Though partnership law has not been "federalised" in any part of the Empire, the differences in the various local systems are so slight that there should be no difficulty in obtaining complete uniformity throughout the Empire. In view of the difference between the English rule as to the "joint" liability of partners and the rule obtaining in many other parts than England, this rule might well be modified in favour of the "joint and several" liability. The provisions for limited partnerships and registration of partnerships are by no means yet universal. Their extension to the whole of the Empire would probably be promoted by the re-casting of the English statutes of 1890, 1907, and 1916 into one Consolidated Act, which could then be adopted overseas in the same way that the Partnership Act, 1890, has itself been adopted.

[1] Registration of Businesses Act, 1909 (No. 36).
[2] Transfer of Businesses Ordinance, 1913 (No. 4).
[3] Mining Act of Ontario (Rev. Stat. 1914, c. 32), s. 122.
[4] Mining Act, 1903 (No. 1), ss. 37–46.
[5] Mining Partnerships Act, 1900 (No. 21).
[6] Mining Act, 1908 (No. 120), ss. 295–305.
[7] Consol. Stat. 1892, c. 99.
[8] Rev. Stat. 1900, c. 144, s. 15.

THE RELATIONS BETWEEN THE ENGLISH LAW AND THE PERSONAL LAW OF INDIANS IN ENGLAND WITH SPECIAL REFERENCE TO THE MARRIAGE LAW.[1]

[*Contributed by* SIR FREDERICK ROBERTSON, KT., K.B.E., LL.D.]

RECENT events have shown it to be very desirable that Indians in England, students especially, should understand as clearly as may be possible, their position here with regard to the marriage laws of this country, as to which they have sometimes been in doubt and difficulty and under misapprehension. The object of this lecture was to assist law students in particular to acquire the necessary knowledge.

Before discussing the position of Indians in England under the laws of this country, with special reference to those relating to marriage, it is necessary to glance very briefly at the position in India itself. As Mr. Mulla puts it,[2] "The power of the Courts in British India to apply the Hindu law to Hindus and the Mohammedan law to Mohammedans is derived from, and regulated by, the statutes of the Imperial Parliament and by local legislation." In the Queen's proclamation it was laid down: "We will that generally in framing and administering the law, due regard be paid to the ancient rights, usages, and customs of India." This is the basis of all subsequent enactments. Hindu and Mohammedan laws have never been enacted in their entirety, but it has been declared that as to questions concerning succession, special property of females, betrothal, marriage, divorce, dowry, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partition, or any religious usage or institution, the rule of decision shall be:

"(1) Any custom applicable to the parties concerned which is not contrary to justice, equity, and good conscience.

"(2) The Mohammedan law in cases where the parties are Mohammedan, and Hindu law in cases where the parties are Hindus.

"(3) In cases not otherwise specifically provided for the judges

[1] An abridgment of a lecture delivered in Lincoln's Inn Old Hall on February 12, 1918, to students of the four Inns of Court.

[2] Mulla, *Hindu Law*, p. 1.

shall decide according to equity, justice and good conscience."

It will be seen that this gives wide scope to the Hindu and Mohammedan law, but does not give it complete application. The position of "custom" has been clearly defined in a recent judgment [1] of the Privy Council, in *H.H. Mir Abdul Hussein Khan* v. *Mussammat Bibi Sona Dero and Another.* Neither the existence of a custom, nor its nature and incidence, is to be presumed, but if one is set up and proved, that will govern the case; if no custom is so proved the rule of decision in "reserved subjects" will be the personal law of the parties, if any; if not, any general law which may apply, or equity, justice, and good conscience. By "personal law" in India is meant the usage, or the Hindu, or Mohammedan law, to which a person may, in virtue of the enactments in question, be subject, in substitution for, or derogation of, the general law. Christians have no such personal law. But, in studying English law books, especially works on private international law, one comes across the expression "personal law." This simply means the law of the person under discussion, as distinguished from the law of the place where the transaction is entered into (*lex loci contractus*) or the place where the property is situate (*lex situs*), and is usually a reference to the law of his domicil. "Personal law," in the sense in which it is used in India as the special usage or law governing groups or races or religions, is quite unknown in this country. This is well brought out by Lord Gorell in *Chetti* v. *Chetti* [2] referred to below. All in this country are under one "law," and this is particularly true as regards the criminal law.

Questions regarding breaches of the marriage law of England, of the jurisdiction of the Courts in matrimonial cases, and questions of succession and legitimacy, stand each on their own footing. Here it will be best at once to remove the danger of a possible misconception. The question of the civil validity of a marriage, and that of the committing of the crime of bigamy are very distinct matters, and the points to be first considered are mainly concerned with civil validity.

Valid Marriages in England.—Bearing in mind that no such thing as "personal law" in the sense in which it is used in India is recognised in this country, we will consider first the view taken of what constitutes a valid "marriage" in this country.

[1] October 30, 1917.

[2] [1909], P. p. 67.

Westlake [1] lays down in his book on Private International Law that :

> A marriage celebrated before an English public officer, clergyman, registrar, marriage officer under the Foreign Marriages Act, and so on, must always be understood to be a monogamous one, even though a party to it may be a Hindu or other person, who in his own country could have contracted a polygamous marriage.

Dicey [2] is equally emphatic.

" Domicil " is a matter which is of great importance in all questions concerning marriage law, and also the law of succession to property. It must be remembered that, for purposes of " domicil," India stands on the same footing as a foreign country. Dicey's definition of " domicil " is, " The domicil of any person is in general the place or country which is in fact his permanent home, but in some cases the place or country which, whether it is in fact his home or not, is determined to be his home by a rule of law." [3]

The Effects of Domicil.—Some of the effects of their place of domicil upon the status of married persons in this country, the remedies open to them, and the jurisdiction, as regards matrimonial relations, to which they would be subject must be considered briefly.

In the first place, the rules as to the effect of the domicil of the parties on the validity of a marriage celebrated in a place other than that of the domicil of one or of both of them are of a somewhat complicated nature. The general rule is that, as regards the form of a marriage, the law of the place of celebration is conclusive, but that as regards material impediments to the validity of a marriage the law of domicil is conclusive.[4] There are, however, three qualifications to the rule that the law of domicil is conclusive as to material impediment, namely, (*a*) the absence of the consent of a third party required according to the law of the domicil of one or both of them is deemed to belong to the form of the marriage, and therefore to be without effect [5] ; (*b*) where the marriage is duly celebrated in England,

[1] *Private International Law*, p. 74.
[2] *Conflict of Laws*, 2nd Ed. p. 260.
[3] *Conflict of Laws*, 2nd Ed. p. 82.
[4] Sussex Peerage case, 11 *Clark* v. *Finelly*, 85; *Sottomayer* v. *de Barros* (1878) 3 P.D.I.; 5 P.D. (C.A.) 94; *Re de Wilton* [1900] 2 Ch. 481.
[5] *Simonin* v. *Mallac* 2 S. & T. 67.

and would be valid here, and one of the parties is domiciled in a country according to the law of which a material impediment to the validity of the marriage exists, an English Court holds the marriage to be valid[1]; (*c*) where the impediment imposed by the law of the domicil is of a punitive nature (*e.g.* where under the law of the domicil a person is divorced *a vinculo*, but subject to the prohibition of marriage with the co-respondent) it is disregarded by the English Courts.[2] Dicey, in his *Conflict of Laws*,[3] sums this up thus: "A marriage celebrated in England is not invalid on account of any incapacity which, though imposed by the law of domicil of both or either of the parties, is of a kind to which our Courts refuse recognition."

The Place of Celebration.—Next, it may be observed that the place of the celebration of marriage is immaterial for the purpose of ascertaining the jurisdiction for matters of divorce and nullity. That depends entirely on the place of domicil as laid down in *Harvey* v. *Farnie*,[4] and *Lemesurier* v. *Lemesurier*.[5] In this connection two cases are specially worthy of attention, *Ogden* v. *Ogden*,[6] and *Stathatos* v. *Stathatos*.[7] It is interesting to notice that there was an international agreement between the nations of the European Continent on most of these points, to which England was not a party. The rule according to which the form of the place of celebration is conclusive as to its validity is, however, subject to the very important qualification that a marriage celebrated in a place in which marriage is not necessarily monogamous is not in any case recognised as a valid marriage according to English law. In the case of *Harvey* v. *Farnie*,[8] in which the general rule as to the sufficiency of the form of the place of celebration was stated by Cotton L.J.:

> Of course, I am speaking only of Christian countries, and that gets rid of what was put to us by Mr. Foote, that we have to consider what would be the consequence of dealing with the law of domicil, supposing it to be Turkish.

It may be noticed that generally in these judgments "Turkish" is used as a synonym for "Mohammedan." Lord Hannen laid

[1] *Ogden* v. *Ogden* [1908] p. 46; *Chetti* v. *Chetti* [1909] p. 67.
[2] *Scott* v. *A.G.*, (1886) 11 P.D. 128.
[3] 2nd Ed. p. 634.
[4] 6 P.D. 35, (1882) 8 A.C. 43.
[5] [1895], A.C. 517.
[6] [1908] P. 46.
[7] 1913] P. 46.
[8] 6 P.D. 35; 8 A.C. 45

it down in *Brinkley* v. *Attorney-General*,[1] and the dictum has received universal acceptance in the Courts of this land, that a "marriage which is not that of one man and one woman to the exclusion of all others, though it may pass by the name of a marriage, is not the status which the English law contemplates when dealing with the subject of marriage." [2]

The Status of Marriage.—Marriage under the English law is a contract and more, a contract, followed by a change of status. In Hindu law it is a sacrament; in Mohammedan law a contract pure and simple. On the principle enunciated by Lord Hannen a marriage in Japan was upheld in *Brinkley* v. *Attorney-General*,[3] because it was held to be proved to be a monogamous union. Similarly, in the case of *Grenal* v. *Grenal*,[4] a decree declaring nullity was granted to an Englishwoman in respect of a marriage celebrated in England with a Sikh, on the ground that the Sikh had previously contracted a marriage with another Sikh, which, according to Sikh personal law and custom, was found to be a monogamous union on the evidence before the Court. The facts in the case of *Hyde* v. *Hyde*[5] were these: Two Mormons married. Later the husband deserted Mormonism, and sought relief by divorce from his wife, who had continued to live as a Mormon and had since married another man. It is important in another connection to notice that in that case the suggestion that the first marriage might be treated as a valid monogamous one, and the rest as void, was altogether rejected, it being pointed out that the nature of the marriage entered into, and intended, was the test, not the actual number of wives, and the judge remarked: "We have in England no law framed on the scale of polygamy or adjusted to its requirements," etc. And it was decided that no relief could be given, as no valid marriage existed which the Court had the power to dissolve. It was expressly stated that no question of legitimacy or succession was decided. Similar views were enunciated in the "Baralong case" in *re Bethel*.[6] A full discussion of the various difficult questions connected with the doctrine of domicil would be impossible here, but it should be carefully noted and remembered

[1] (1896) 15 P.D. 76.
[2] See also *Rex* v. *Naguib* [1917], 1 K.B. 359, 1917.
[3] 15 P.D. 76.
[4] *The Times*, August 1, 1907.
[5] 1 P. & D. 130 (1866).
[6] 38 Ch. D. 229 (1888).

that it is laid down by Westlake, Dicey, and Story, and in various judgments which have been quoted, that the rules in force regarding the effects of domicil on marriage have effect alone in countries which recognise monogamous marriages only. Dicey says,[1] "These rules have no application to connections which, though called marriages, are not intended for life, or are made with a view to polygamy." Story,[2] the great American writer, is equally clear.

The Effect of Polygamous Marriages.—What are, then, the effects, *qua* marriage, of polygamous marriages contracted in India, as regards subsequent marriages contracted according to English law, in England? The view taken in *Harvey* v. *Farnie*,[3] and expressed in the following words, has never been dissented from: "Marriage, in the contemplation of every Christian community, is the union of one man and one woman to the exclusion of all others," following, *inter alia*, *Hyde* v. *Hyde*. That is, a marriage contracted in a country recognising polygamy by persons whose law allows polygamy, even though there be only one wife at the moment, is no marriage in England, and no bar to a valid monogamous marriage here.

We will now consider one or two specially important decisions bearing directly upon the point before us.

Chetti *v.* Chetti.—The first is *Chetti* v. *Chetti*.[4] The facts were that Chetti, a Hindu (having wives in India), married an Englishwoman in England before the Registrar. Chetti was only living temporarily in England. His domicil was Madras. He paid a visit to England, and while there his wife petitioned for a judicial separation. The defence set up was, *inter alia*, that Chetti, being a Vaisya, or twice-born Hindu, was forbidden by the laws of his caste to marry outside it, and that he carried his "personal law" in the Indian sense with him, and therefore that the English marriage was void.

Lord Gorell pointed out the difference between the idea of "personal law" as affecting international relations, and the "personal law" recognised in India to the extent declared by statute there.[5] He said[6]:

> Nor is there anything in the legislation aforesaid which shows that

[1] *Conflict of Laws*, p. 260.
[2] *Conflict of Laws*, p. 113.
[3] (1881) 6 P.D. at p. 53.
[4] [1909] P. 67.
[5] *Chetti* v. *Chetti*, 1908, P. p. 67.
[6] P. 77.

rules of life and conduct which would be applicable to him in India in his dealings are to be held by the Indian Courts to be applicable to him in his dealings in another country with an inhabitant thereof.

And again [1]:

It results, from what I have said, that what is set up by the respondent is not a general disability, because of his being domiciled in India; that is to say, not a disability grounded on the fact that he is a domiciled Indian, and is governed by a general law, which deals with all the inhabitants of India, as in the case where foreign laws have had rules as to consanguinity differing from that prevailing in this country, of which the case of *Sottomayer* v. *de Barros* [2] is an illustration; but what is relied on by the respondent is of the nature of a religious disability which differs little, if at all, from that of the priest referred to by the late Lord Hannen in his judgment in that case.

That is not, in truth, a disability by the laws of his domicil, which cannot be got rid of at the will of the respondent, and there seems to be no status of which notice can be taken in this country, creating an incapacity to enter into a marriage contract in this country. I may refer, while dealing with this part of the case, to the old statement with regard to religious disabilities [3] of foreign profession (that is, in religion) the common law taketh no knowledge.

This is very important as is also the next passage quoted, which follows a discussion of the evidence.

Upon the evidence, therefore, I am unable to find, as a fact, that the law of India is in favour of the respondent, *i.e.* that it is proved that such a marriage would be held invalid in India, nor can I find any sufficient reason given, or principle stated, from which it should follow that the Courts of India would apply Hindu law and usage to a case such as this, when the respondent has acted, not in India, but in England, in defiance of such laws or usage.

And it was finally decided that the marriage was a valid monogamous marriage, and that, as both parties were within the jurisdiction of the Court when the petition was presented, the wife was entitled to a decree of judicial separation and the custody of the child.

The view suggested in *Niboyet* v. *Niboyet* [4] that mere residence

[1] *Chetti* v. *Chetti*, 1908, P. p. 78.
[2] 5 P.D. 94 (1879)
[3] Co. Litt. 132 b.; 5 P.D. p. 80 (1894).
[4] 4 P.D. i.

might give plenary jurisdiction to the Courts of a country, and enable them to pronounce decrees of divorce, must be taken to have been definitely overruled. The power to grant judicial separations has, however, been very recently affirmed by the Court of Appeal in *Anghinelli* v. *Anghinelli* decided on May 13, 1918. There are other cases which have some bearing on the questions before us, most of which have been noticed in *Chetti* v. *Chetti*, or in Anwaruddin's case.[1]

Anwaruddin's Case.—Dr. M. Anwaruddin is a barrister. While a student here he married a young Englishwoman before the Registrar, he being himself a Mohammedan; in March 1913 disputes arose, and the wife left her husband, who obtained a decree for restitution of conjugal rights in the City Civil Court of Madras, apparently *ex parte*. It is not quite clear upon what ground the decree was obtained. It was not obeyed. Anwaruddin came to this country, and the wife filed a petition in the English High Court for a judicial separation; finally, that petition was not proceeded with, and was dismissed. Then Dr. Anwaruddin put in a petition for divorce, which the Registrar refused to admit, and on an appeal Bargrave Deane J. dismissed the appeal on the ground of want of jurisdiction, Anwaruddin being domiciled in Madras, but went on to make further remarks which were really *obiter dicta*. He observed that Anwaruddin had divorced his wife in India by "Talak," and appeared to consider that this dissolved the marriage. Dr. Anwaruddin then applied for a mandamus, and obtained a rule *nisi* calling upon the Superintendent Registrar of Marriages for Hammersmith to issue a certificate and licence for the applicant to marry an Englishwoman. The case came before the King's Bench Division, consisting of the Lord Chief Justice (Lord Reading) and Darling and Bray JJ. The final decision was:

> A declaration of divorcement made according to Mohammedan law has not the effect in England of dissolving a marriage contracted in England according to English law, so as to entitle the husband to marry again in England.[2]

Lord Reading pointed out that there was no decree dissolving

[1] *Rex* v. *Hammersmith Superintendent Registrar of Marriages, ex parte Anwaruddin* [1917] 1 K.B. p. 634.

[2] [1917] 1 K.B. p. 634.

the marriage by a Court of Competent Jurisdiction in the country of domicil, and went on to say that—

> It must certainly not be inferred that, even if there were such a decree founded on "Talāk" that such a decree of a foreign Court would be accepted by our Courts as dissolving a marriage contracted here. In my judgment it follows, from the opinions expressed by the learned President (Lord Gorell) in *Chetti* v. *Chetti*, and on general principles there stated, that a person who by the Mohammedan law is permitted to have four wives cannot, on the ground that the English law only recognises a monogamous marriage, set up the illegality of a marriage contracted here. It is not contended that there is a law applicable to Mohammedans domiciled in the Empire of India, making it incumbent upon a Mohammedan to have more than one wife or forbidding him to enter into a monogamous marriage if he so pleases.

It is not strictly relevant, but is interesting to note here that a great authority [1] says that there has always been a Mohammedan section, the Mutazalas, who profess and practise monogamy. And he says, further, which is no doubt correct, that in India, as a matter of fact, the great majority of Mohammedans have only one wife at a time. This is also true of most Hindus, although in both cases polygamy is permitted by their personal law.

Lord Reading also notes the point made by Lord Gorell that "the law of his religion is the applicant's personal law, not the general law applicable to all who are domiciled in India." It must be remembered that the "law of his religion" only applies to Mohammedans in India in so far as it is laid down by statute and not in its entirety. The judgment of Bargrave Deane J. was set aside as not binding on the Court, and clearly erroneous as regards the reference to the effects of "Talāk." Affidavits were put in showing that as regards purely polygamous Mohammedan marriages "Talāk" was an effective form of divorce, and Mr. Justice Darling assumed that to be correct, as, of course, it is in India, but said that it could not be accepted here as applicable to Christian marriages, and went on to quote Lord Brougham in *Warrender* v. *Warrender* [2] with approval.

Dr. Anwaruddin appealed, and his appeal came before Swinfen

[1] The Right Hon. Syed Ameer Ali. [2] (1835) 2 *Clarke & Finnelly*, pp. 488, 532.

Eady and Bankes L.JJ., and A. T. Lawrence J. After pointing out that the Marriage Registration Act, 1856–89,[1] directed a Superintendent Registrar to issue a certificate and licence to marry "provided that no lawful impediment to the issuing of such a certificate is shown to his satisfaction," Swinfen Eady L.J. went on, after referring to the principal cases, to quote Lord Brougham in *Warrender* v. *Warrender*[2] to the following effect: "Marriage is one and the same thing all the Christian world over; our whole law of marriage assumed this. . . . We clearly never should recognise plurality of wives or consequent validity of second marriages, standing the first, which second marriages the laws of those countries authorise and validate." Swinfen Eady L.J. declined to discuss the appellant's position in India, but said: "This lawful marriage is still subsisting." In the circumstances the marriage between the appellant and Ruby Hudd has not been dissolved by any competent Court, and it is not a marriage which by Mohammedan law can be dissolved by writing of divorcement under hand. It is impossible that a marriage with an Englishwoman contracted in England can be so dissolved, and that without the concurrence of the wife. The English marriage is still subsisting. The appeal was therefore dismissed, Bankes L.J. and A. Lawrence J. concurring.

Conclusions.—We are now in a position to draw one or two conclusions: (1) No marriage, wherever contracted, is, as regards the status of marriage between the parties, of any validity in this country unless it be a purely monogamous union. The only marriage recognised in England is a union of one man and one woman, and a marriage celebrated in England before any English public officer (clergyman, registrar, or marriage officer under the Foreign Marriage Act) *must* always be understood to be a monogamous one, even though a party to it be a Hindu or a Mohammedan,[3] or other person who in his own country could have contracted a polygamous marriage. And nothing is a marriage in England unless celebrated before an English public officer. Any person who, having contracted such a marriage, while it is still undissolved, goes through a second similar marriage, commits bigamy.[4]

As regards Parsis, the question is set at rest by the Parsi Marriage

[1] 19 & 20 Vict. c. 119.
[2] *Loc. cit.*
[3] Westlake, p. 34a, p. 79.
[4] Abdul Hamid's case.

Act X. of 65, s. 4 of which provides that no Parsi shall contract a marriage while he or she has a wife or a husband living, unless such husband or wife shall have been divorced, and s. 39 provides that bigamy with adultery is a good ground for a claim for dissolution of marriage. Parsi marriage is now, therefore, clearly a monogamous connection, and gives rise to none of the difficulties we have to consider.

Adherents of the Brahmo Somaj are monogamists. This was clearly laid down in *Sonalixmi* v. *Vishnu Prasad Hari Prasad.*[1]

Marriages under Act 3 of 1872 which provides a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Mohammedan, Parsi, Buddhist, Sikh, or Jain religion are clearly decared to be monogamous by s. 2 ; and s. 15 provides that any one who married under this Act and is already married commits bigamy under s. 494 or s. 495 of the Indian Penal Code, and s. 16 provides that change of religion, subsequent to such a marriage, whatever the religion professed, would not alter the liability to punishment for bigamy. It was held in *Emperor* v. *Lazar*[2] that an Indian Christian with a wife living, who became a Hindu and married another wife, would be committing bigamy. So in " In the matter of Rani Kuniari,"[3] it was held that a Hindu wife was not absolved from her liabilities under her Hindu marriage by turning Mohammedan.

Inheritance.—Indian students usually do not contemplate a permanent stay in this country, and do not intend to acquire a domicil here, and do not intend to die here. As regards questions of inheritance, therefore, all that need be said is this. It is true that the Courts, in giving decisions on questions connected with the marriage status, have specifically disclaimed any intention to decide questions of legitimacy or succession to property. But, while this is so, and while for such purposes Courts lean to findings in favour of legitimacy, in view of its having been laid down that only monogamous marriages are recognised in this country, it would be much the wisest course to assume that polygamous marriages would not be accepted as valid for any civil purpose, and to act on this assumption, notwithstanding anything to be found in Westlake's or Weightman's works.

Marriages of Indians with Englishwomen.—What is the position

[1] 28 Bombay L.R. 597.
[2] 30 Mad. 551, overruling 3 M.H.C.R. App. 7
[3] 18 Calc. 264.

of a Hindu or Mohammedan who has married an Englishwoman before an English public officer in England, while he is still in this country, and after his return to India?

If any person contracts a valid marriage in England, for example, before the Registrar, he can contract no other valid marriage in this country until that one has been dissolved.[1]

If, by false statements, he induces a Registrar to marry him to a second wife while he has one validly married in England living, he becomes subject to the same pains and penalties as if he committed perjury. He has also committed bigamy. He cannot in excuse plead "polygamy" as his personal law. This is perfectly clear, and beyond all doubt, and a Mohammedan law student of one of the Inns was recently convicted and sentenced for bigamy and perjury for having married one English girl before the Registrar, and then having married a second before another Registrar, to whom he falsely asserted that he was unmarried. So far we are on sure ground.

English Law of Bigamy.—But it is to be noted that the English law of bigamy goes much further. The offence of bigamy is one of the few offences which, according to English law, are punishable, even if the act constituting the offence be committed outside of England, by a British subject. Therefore the offence would be committed under the law of England even if the second marriage were celebrated in India as a Mohammedan marriage. The fact that such a marriage would, even independently of the bigamy, not be recognised as a valid marriage according to English law would not affect this conclusion. 24 & 25 Vict. c. 100, s. 57, provides that, "Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland *or elsewhere*, shall be guilty of felony," etc. The word "whosoever" must, of course, have a limitation, but it includes every British subject.[2]

In the case of *Rex* v. *Allen*[3] the following rule was laid down:

> Where a person already bound by an existing marriage goes through a form of marriage known to and recognised by the law as capable of producing a valid marriage . . . the case is not less within the statute by reason of any special circumstances which, independently of the

[1] Marriage Regr. Act, 6 & 7 Will. 4, c. 36, s. 41.
[2] See *R.* v. *Topping*, Dearsley, 647.
[3] L.R. 1 C.C.R. 376.

bigamous character of the marriage, may constitute a legal disability in the particular parties."

The words "known to and recognised by the law" must, it would appear, refer to the law of the place of celebration.[1] The conclusion that a second marriage by a form not recognised by law will not amount to bigamy, clearly referring to the law of the place of celebration was not accepted in its entirety in *Rex* v. *Allen*.[2]

Thus, a marriage which is valid in England when contracted, one of the parties to which is domiciled in England, is valid in this country for all purposes, and it would appear that an Indian who, having contracted such a marriage, returns to India and goes through a form of marriage there, recognised as to form by the law of that country, is guilty of bigamy according to English law, and would be punishable for such an offence in England.

Effects of Previous Polygamous Marriage on Marriage in England.—What is the position, then, of an Indian who has contracted a polygamous marriage in India, valid in that country, and who, with a wife or wives living in India to whom he is legally married, comes to England and here goes through the ceremony of marriage before a Registrar? As regards his English marriage, it is now clear law that in England this is a valid marriage, and the only valid marriage so recognised, as far as the civil law is concerned. But under the Criminal Law the case is quite different, and we must turn to the decision in *Rex* v. *Allen* for the principles governing the law of bigamy.

From the comprehensive terms of 24 & 25 Vic. c. 100, s. 57, and the views expressed in *Rex* v. *Allen*, an Indian who had contracted a polygamous marriage valid in India, and who had a wife or wives still living there, would appear, if he enters into a monogamous marriage before a Registrar in England, to be liable to an indictment for bigamy. The scandal and injury to the wives spoken of as constituting the essence of bigamy in *Rex* v. *Allen* would be present; a woman so married in England would find, on return to India, that her husband had other wives in existence, the injury to be provided against is there, and though, as the case has never yet been actually decided, certainty is not possible, it appears that the judges in *Rex* v. *Allen* would have upheld a conviction in such a case. For this purpose a man "married" in accordance with the law binding him

[1] See *Burt* v. *Burt*, 29 L.J. (P. and A.), 133. [2] *Ubi supra.*

in India would be "married" within the meaning of the Act, the offence against the second wife being none the less, because the first was polygamous, and not recognised by the English civil law, just as in the case dealt with in *Rex* v. *Allen*; marriage between an uncle and a niece was not a legal marriage according to the English civil law. Lord Romilly's definition of bigamy quoted below would appear to apply with great force to such a case.

Effects of Second Polygamous Marriage.—The question, "If an Indian validly married in England to an English girl afterwards goes through a Mohammedan ceremony of marriage in this country, say at Woking, with another woman, what offence has he committed?" Would the principles laid down in *Rex* v. *Allen* be held to supply the answer?[1] In the course of their judgment in that case the Court of Crown Cases Reserved, an exceedingly strong one, remarked:

> A second marriage consequent on an abandonment of the first, while the latter still stands, is unfortunately of too frequent occurrence. . . . It is always resorted to by one of the parties in fraud of the law, sometimes by both, in order to give the colour and pretence of marriage where reality does not exist. Too often it is resorted to for the purpose of a villainous fraud. . . . The ground on which such a marriage is made penal is that it involves an outrage on public decency and morals.

No doubt in that case the form of marriage gone through in the bigamous marriage was one recognised by the law of this country, though the marriage itself would have been invalid, apart from the subsisting legal marriage, as marriage between the parties, an uncle and niece, was impossible.

Lord Denman said in *Regina* v. *Brown*[2]:

> I am of opinion that the validity of the second marriage does not affect the question. It is the appearing to contract a second marriage and the going through the ceremony which constitutes the crime of bigamy, otherwise it would never exist in the ordinary cases, as a previous marriage always renders null and void a marriage that is celebrated afterwards by either party during the life-time of the other. Whether, therefore, the marriage of the two prisoners was or was not in itself prohibited, and therefore null and void, does not signify, for the woman, having a husband then alive, has committed the crime of bigamy by doing all that in her lay by entering into marriage with another man.

[1] L.R.I.C.C.R. 376. [2] I.C. & K. 144.

And Lord Romilly [1] thus defined bigamy: "The real nature of the crime is that of a fraudulent and most aggravated seduction, effected under colour of law." These views were approved in *Rex* v. *Allen*, and the judges in that case went on to remark that "the deception would not be less atrocious because the one party may have induced the other to go through a form of marriage known to be generally binding, but inapplicable to their particular case." The Court then decided that the words in 24 & 25 Vict. c. 100, s. 57, "shallmarry another person," meant "shall go through the form and ceremony of marriage with another person."

Whether or not going through a ceremony of Mohammedan marriage in England, not recognised as valid in this country either in form or substance, would come within this definition or not, cannot be said to have been decided; but the leanings of the Court in *Rex* v. *Allen* are unmistakable, and they remarked, in regard to this particular class of cases, that it will be time enough to deal with them when they arise. *Rex* v. *Allen* is the great authority on the points dealt with therein, and supersedes all that preceded it. And the judges lay down quite clearly the principle that the statute which deals with bigamy, and classifies it as a felony, is not to be injuriously restricted by meticulous criticism and restraints, verbal or otherwise, and that the term "marriage," in this connection, has a much wider signification than "valid marriage" under the civil law. It cannot be confidently asserted that these principles ought not to be held to cover the case of a Mohammedan marriage celebrated in this country by a man who has a wife legally married in this country still living and not divorced, albeit the second marriage itself would not be recognised in civil law in form or substance. The law of England, however, only recognises monogamous marriages, and it is quite clear, whatever else may be in doubt, that the plea that polygamy was permitted by the personal law of the accused would be of no avail to meet a charge of bigamy. But it is quite clear also that, whether or no a Mohammedan or Hindu with a valid monogamousmarriage subsisting, bygoing through a ceremony of polygamous marriage in this country, commits the felony of bigamy, he is guilty of a very serious crime, *i.e.* a misdemeanour punishable with two years' imprisonment. By inducing a woman to go through the ceremony of a Mohammedan marriage under the deceit that by so

[1] Quoted in *Rev* v. *Fanning* 17 Tr. C.L.R. at p. 388.

doing she becomes his legal wife, an offence, and a serious one, is committed under 48 & 49 Victoria, c. 69, s. 3.[1] This section runs :

> Any person who, by false pretences or false representation, procures any woman or girl, not being a common prostitute or of immoral character, to have any unlawful carnal connection either within or without the Queen's dominion, shall be guilty of a misdemeanour, and shall be liable to imprisonment for any time not exceeding two years with or without hard labour.

Therefore, clearly, if by representing a polygamous Hindu or Mohammedan marriage to be a valid marriage, though bigamous or polygamous, a Hindu or Mohammedan induces a girl to go through the ceremony with him, and then, under the belief induced by him that she is his lawful wife, to submit to carnal intercourse, such Hindu or Mohammedan has committed a very serious misdemeanour, and rendered himself liable to very serious punishment, even if he escapes a conviction for felony.

Effect of Marriage in this country after return to India.—Now what is the position when a Hindu or Mohammedan, having contracted a valid monogamous marriage in this country, returns to India ? In the first place, if a Hindu, of course, *qua* Hindu, he could not divorce at all, if a Mohammedan he cannot divorce by "Talāk," and, not being a Christian, he cannot apply for divorce under the Indian Marriage Act, though his wife, if a Christian, could do so, for it is only necessary for the petitioner to be a Christian.[2] He is therefore debarred from divorce of his own motion. But how does he stand as regards the power to marry another Hindu or Mohammedan wife ? Following the views of the various English judges quoted, it would appear that he would be committing bigamy. Lord Gorell expressed the view that Chetti's marriage was valid in India, the City Civil Court at Madras apparently accepted Dr. Anwaruddin's marriage as valid, though little stress can be laid on this last point. Lord Reading held clearly that a Mohammedan could, if he so pleased, contract a monogamous marriage with all the incidents and results springing from that status. And it must be remembered that the practice of polygamy is a privilege attached to the practice of their personal law, but not enjoined or enforced on any Hindu or Mohammedan, and, as Lord Gorell points out, it

[1] The Criminal Law Amendment Act, 1885.
[2] S. 2 Indian Divorce Act, IV. of 1869.

can be surrendered at will, and does not resemble the general law of a land of domicil applicable to all the subjects of that land. And marriage, as well as conferring a status, is a contract; it is a contract and something more, and if a Hindu or a Mohammedan chooses to enter into a monogamous union with an Englishwoman, does he not accept the status of a monogamist, and so becomes unable to retrace his steps from that position by pleading a return to the personal law of his religion? The Right Hon. Syed Ameer Ali—late a judge of the Calcutta High Court, and now a member of the Judicial Committee of the Privy Council—says in his book on Mohammedan law: "For it seems to me that by entering into a marriage relationship with a woman belonging to a monogamous community according to monogamous rites, he takes upon himself all the obligations springing from a monogamous relationship." [1]

The judges of neither Court in Anwaruddin's case decided what would be the position in India of a Mohammedan or Hindu, who contracted a monogamous marriage in England, but, as I understand them, both Courts, and the Court in *Chetti* v. *Chetti*, were very clear that either a Hindu or Mohammedan is competent to contract a monogamous marriage in England, and no other, and that the marriage in both cases, one the case of a Mohammedan, and the other a Hindu with a Christian woman, were still subsisting and valid in India. And here the point comes in so strongly made by Lord Gorell, that the personal law of a Hindu or Mohammedan in India is something quite different from the general law of a person's domicil covering all persons domiciled in a particular place, in that it can be repudiated at will, and the general law accepted. These views involve that a Hindu or Mohammedan who had contracted a monogamous marriage here would be bound by the contract he had so entered into, and that any further marriage which he entered into would, so long as the first stood, be bigamous. The crime of bigamy is, of course, chiefly a crime against the second wife, and one of the tests applied under the Indian Penal Code is, would the second marriage be good if the first did not exist? If not, there may be an offence, but it is not bigamy in India.

Law of Bigamy in India.—A., a Mohammedan (or Hindu), has married B., an Englishwoman, in England, before a Registrar; under the decisions quoted that is a valid monogamous marriage, and is

[1] Ameer Ali's *Mohammedan Law*, 3rd Ed., vol. ii. p. 201.

valid in India. A. returns to India, and takes another Mohammedan or Hindu wife. As he is committed to a monogamous marriage, the second wife is not his wife, but he has gone through a ceremony which would make her so but for the existence of the first. The Penal Code does not lay down the law of bigamy exactly as it is laid down for England in *Rex* v. *Allen*. It says nothing about Hindu or Mohammedan law, but simply, "Whoever, having a husband or wife living, marries, in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished," etc.[1] There can be no doubt that any one, be he Hindu or Mohammedan, who marries an Englishwoman before an English public officer in England, and then returns to India, and with this monogamous marriage still standing, marries another wife according to Hindu or Mohammedan rites, runs the gravest risks of a prosecution for bigamy, while at the same time he has put himself into the position of being unable to dissolve the marriage. The purely legal aspect of the question in this country only has been dealt with, but it is impossible to avoid noticing the very doubtful position of a Hindu or Mohammedan, who has been married in India validly, according to personal law, but who comes to England and contracts a valid monogamous marriage in England. On his return he finds himself, if a Mohammedan, with a Mohammedan wife, or wives, whom he could divorce, and a "monogamous" English wife whom he cannot divorce, and whose presence "standing the marriage" prevents him from marrying again at all, and if he be a Hindu he cannot divorce either. The position is not an enviable one, and, speaking merely from the legal point of view, without considering any other aspect of the case, is one to be very carefully avoided.

This discussion has been strictly confined to consideration of the law as it appears to be at this moment. It would lead too far afield, and would open up too many controversial points, to discuss here what it ought to be, or might be. Endeavour has been made in every case to quote full authority, as regards any point definitely decided, and, where it cannot be said that any definite binding decision has yet been promulgated, to give the dicta and authorities clearly upon which any conclusions suggested are based, so that, as far as may be, Indian students and others may be able to judge how they stand in this connection.

[1] Penal Code, s. 494.

THE DUTCH CONVOY.

[*Contributed by* HUGH H. L. BELLOT, D.C.L.]

THE right of visit and search was recognised at least as early as the twelfth century, and since the *Consolato del mare* no claim to exemption appears to have been made until the middle of the seventeenth century. In 1653, during the war between England and the United Provinces, Sweden asserted the right of exemption from search of its merchantmen sailing under convoy. The commanders of her men-of-war were instructed to resist by force every attempt by the belligerent to visit the merchantmen under their protection. The war, however, was of too short a duration for these instructions to become operative. In the subsequent treaty of 1654 between Cromwell and the United Provinces it was provided that the ships of war of either State should take into their protection all ships belonging to the other State as long as they steered the same course. This provision was probably the origin of the contention put forward by Holland in the succeeding war between England and Spain in 1655 that her merchantmen under convoy were exempt from visitation. This contention would not appear to have been admitted by the English Government, although the commander of an English squadron accepted the bare word of De Ruyter that the vessels under his convoy contained nothing belonging to the King of Spain. This, however, appears to have been untrue. According to a contemporary letter the fleet was laden with large stores of plate and money "for the ease of the Spaniards and their campaign." It is not surprising, therefore, to find that a treaty between the States-General and England, proposed in 1657, containing provisions for the exemption from visit and search of vessels under convoy should have miscarried. The Dutch Ambassador, Nieuport, argued that the responsibility of the naval officers in command of the convoys gave a security to the Government which could be attained in no other way. The British negotiators replied that such a plan afforded

no security, and "that they could not, nor ought, to trust so much to particular captains at sea" who might "assist the enemy."

It is quite clear from a letter from Cromwell, August 30, 1657, that the Protector regarded the visit and search of Dutch ships believed to have Spanish goods on board, whether under convoy or not, legitimate both by the law of nations and by the particular treaties with the United Provinces.[1]

The real object of this policy of the northern maritime Powers was to obtain a monopoly of the carrying trade. This was the meaning of the action taken by them in the struggle for naval supremacy with England in the seventeenth century. In a letter from the Hague to Secretary Thurloe in 1655, it is stated that the Dutch had a design to hinder Cromwell from all visitation at sea by strong and sufficient convoys, and by this means draw all the trade to themselves and their ships.[2] Moreover, whenever Holland herself was a belligerent, she claimed the right to visit vessels under convoy. The Dutch declaration of war against France of 1689 illustrates this. Nevertheless, when Captain Deval in 1762 and Admiral De Byland in 1780 forcibly resisted attempts by English cruisers to visit the vessels under their protection, the Dutch Government supported the action of these officers.

The resistance of a Swedish man-of-war to an attempted visit by an English cruiser of a vessel under her protection drew attention in 1781 to this question. Holland had already agreed with the United States in 1780 that the ship's papers of vessels under convoy should not be demanded, but that the word of the officer commanding the convoy should be accepted. Similar provisions were subsequently inserted in a number of treaties: between Russia and Denmark, 1782; United States and Sweden, 1783; United States and Prussia, 1785; Russia and the Two Sicilies, 1787; United States and Morocco, 1787; Russia and Portugal, 1787; United States and Tunis, 1787; and United States and France, 1800.

Stowell's Judgment in the "Maria."—Although throughout this period England had herself been a party in numerous treaties to a system of passports or certificates, she steadily refused to give up the right to visit and if found necessary to search at sea. For instance in 1798, a Swedish fleet of merchantmen under convoy, was, upon resistance being made to visit, seized and the captured

[1] Thurloe, *State Papers*, vol. vi. 511, 621. [2] *Ibid.* vol. iv. 203.

vessels condemned by Lord Stowell in his memorable judgment in the *Maria*.[1] Nowhere has the law, and the reason of it, been more clearly stated.

That the right of visiting and searching merchant-ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestable right of the lawfully commissioned cruizers. I say both ships, the cargoes, the destinations what they may, because, till they are visited and searched, it does not appear what the ships, or the cargoes, or the destinations are ; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists. This right is so clear in principle that no man can deny it who admits the legality of maritime capture ; because if you are not at liberty to ascertain by sufficient inquiry whether there is property that can be legally captured, it is impossible to capture. Even those who contend for the inadmissible rule that *Free ships make free goods*, must admit the exercise of this right at least for the purpose of ascertaining whether the ships are free ships or not. The right is equally clear in practice ; for the practice is uniform and universal upon the subject. The many European treaties which refer to this right, refer to it as pre-existing and merely regulate the exercise of it. All writers upon the law of nations unanimously acknowledge it, without the exception even of Hubner himself, the great champion of neutral privileges.

Shortly afterwards, in the spring of 1800, occurred the incident of the *Freya*, a Danish frigate in charge of six merchantmen, which, after a short action with six British cruisers, upon a refusal to submit to visit, was carried as prize to the Downs. Upon the King of Denmark agreeing to suspend his convoys, all the vessels were released and compensation made.

Exemption from Search by Treaty.—Meanwhile the Convention of the Armed Neutrality of 1800 had been signed by Russia, Sweden, Denmark, and Prussia, whereby the declaration of the naval officer in charge of a convoy that the vessels under his protection have no contraband on board sufficed to preclude any visit to his ship or to the ships convoyed. By the treaty with Russia of June 17, 1801, Great Britain for the first time and last time since Cromwell recognised the exemption of merchantmen under convoy from visit and search. Acceded to by Denmark and Sweden, this convention was annulled in 1807. By numerous other maritime Powers, however, treaties have been made during the nineteenth century granting

[1] 1 *C. Rob.* 340 [1799].

this exemption, and the naval regulations of France, Russia, Austria, Germany, Spain, Italy, Denmark, and Sweden provide that the declaration of the commanding officer of the convoying vessel shall be accepted as a guarantee that the ships under his charge are not engaged in illicit traffic.

This raises the difficult question whether the rule is not eaten up by the exceptions. Bynkershoeck, for instance, would have argued that when treaties of a certain purport became numerous enough, the question is no longer what is the law in the absence of treaties, but whether the rule in the treaties has not become the law. Some modern jurists have also taken this line of argument, but the weight of authority is against them. Treaties granting exemptions from the law are themselves, *ipso facto*, evidence of the validity of the law.

The Position of the United States.—In spite of her numerous treaties, and even of a statute authorising merchantmen to resist visit and search by French ships, the United States Courts have consistently upheld the British contention. A neutral, said Mr. Justice Story in the *Nereide* [1]—

> Is bound to submit to the belligerent right of search, and he cannot lawfully adopt any measures whose direct object is to withdraw that commerce from the most liberal and accurate search without the application on the part of the belligerent of superior force. If he resist this exercise of lawful right, or if, with a view to resist it, he take the protection of an armed neutral convoy, he is treated as an enemy and his property is confiscated.

The Declaration of London.—In 1910 Great Britain came into line with the majority by accepting the provisions of the Declaration of London. By Art. 61 of the Declaration neutral vessels under convoy are exempt from search, the commander of a convoy being required to give in writing to the commander of the belligerent cruiser all the information as to the character of the vessels and their cargoes which could be obtained by search.

The reason for the rule was said to be that the belligerent ought to be able to find in the assurances of the official representative of the neutral Government as good a guarantee as would be afforded by a search itself. By Art. 62, if the belligerent commander had reason to suspect that the confidence of the neutral commander had been abused, he was to communicate his suspicions to him and the latter

[1] 9 Cranch, at p. 438 (1815).

alone was required to investigate the matter. If the suspicions were verified, the exemption was to be withdrawn. In one important respect it will be observed that the provision goes beyond that of the Anglo-Russian treaty of 1801, whereby both commanders were authorised to make a joint investigation The objections to such a course taken by M. Renault are not very convincing.

Upon the abandonment of the Declaration on July 7, 1916, Great Britain reverted to the old common law, to which the United States, upon entering the war, also declared her adherence.

The Right of Search under Present Conditions.—The primary object of visit and search is to ascertain whether the neutral vessel is carrying contraband or otherwise committing an unneutral act by assisting the enemy. It is admitted on all hands that, under present circumstances, an effective search is impracticable at sea. In the first place, owing to the enormous size of modern carriers such search is physically impossible at sea. Secondly, owing to the German conduct of submarine warfare, it is too dangerous. It invites destruction of the carrier and of the belligerent cruiser alike. If an arrangement, by which an effective search is rendered possible elsewhere than on the high seas can be reached, what possible objection can be taken ? Such an arrangement was reached in the case of the Dutch convoy to the East Indies.

From the published Correspondence,[1] it appears that it was not the intention of the Netherlands Government to institute under the protection of their men-of-war, any commercial intercourse which, without that protection, would not be permitted by the belligerent according to their views of the commercial liberty of neutrals. The Netherlands Government merely proposed—partly by restrictions to be imposed on the status and character of the passengers and cargo, and partly by submitting to the belligerents for inspection and verification the ship's papers and other documents prior to sailing—to afford to the belligerents practically the same guarantees and means of control as the belligerents might otherwise be able themselves to enforce by exercising the right of search. But if the belligerents were completely satisfied with such guarantees what, asks Lord Robert Cecil, was the need for the protection of a convoy ? Could it be that the Dutch Government did not trust the good faith of the German High Command ?

[1] *Parliamentary Papers Misc.* No. 13 (1918). (Cd. 90 28.)

The convoy was to consist of a man-of-war, a converted liner, a merchant-ship, and a collier. The warships were to carry only naval personnel and war supplies and the merchant-ships only Government officials and officers of the Indian army with their families and goods destined for the Government of the Dutch East Indies. The British Government, without waiving their right of search and with the clear understanding that the concession should not be regarded as a precedent, agreed to the sailing of the convoy upon the following conditions:

(*a*) A detailed list of all passengers sailing in the convoy to be furnished to His Majesty's Government, none but Dutch officials and their families being allowed to proceed.

(*b*) Full particulars of the cargo on board any merchant vessel sailing in the convoy to be supplied in the same way as is now done by the Netherlands Oversea Trust in respect of ships under their control.

(*c*) The Netherlands Government to give a formal guarantee that no goods shipped in the convoy are either wholly or in part of enemy origin.

(*d*) The ships sailing under the Dutch naval flag, including the converted liner not to carry any civilian passengers nor any goods or articles other than warlike stores destined for the colonial authorities or forces, of which complete lists should be furnished.

(*e*) No mails, correspondence, private papers, printed matter, or parcels to be carried by any ship in the convoy (except official despatches of the Dutch Government).

(*f*) The convoy not to sail until the above stipulated particulars and undertakings have been furnished and have been found satisfactory to the British authorities.

These conditions having been accepted by the Netherlands Government, a further delay in the departure of the convoy took place owing to the discovery, upon inspection, that one of the passengers did not comply with the conditions laid down and that aniline dyes of German origin were included in the cargo. Upon the removal of this cause of dispute, the convoy sailed. It is probably on somewhat similar lines to these that the difficult problem of search at sea may eventually be solved.

LAND LAW AND REGISTRATION OF TITLE IN THE PHILIPPINE ISLANDS.

[*Contributed by* Mr. Justice J. R. Innes, *Acting Chief Judicial Commissioner, Federated Malay States.*]

When the United States of America acquired the Philippine Islands under the treaty of peace made with Spain in 1898, and went into occupation of them, they found that a large proportion of the agricultural land in the Islands had remained unoccupied and uncultivated. This condition was attributable partly to the fact that the Filipinos are not an enterprising people, and showed no readiness to leave their settled homes and face the hardships incidental to the opening up of new provinces, and partly to the fact that under the Spanish régime no great encouragement was offered to such enterprise. Indeed the Spanish Government appears never to have undertaken any methodical survey even of the occupied lands in the Islands, and such land records as existed were, with the exception of those relating to three or four provinces, destroyed before the Americans came into occupation. In 1906 the area of the agricultural lands in the public domain was estimated at 8,400,000 hectares, and the amount of forest lands at about twice that area (a hectare is 2·471 acres). The American Government thus found itself to a large extent free to inaugurate a new land policy in the Islands. The measures which it took to remedy the existing chaos in respect of the administration of public and occupied land are embodied mainly in two Acts passed by the Philippine Commission of the United States, namely The Public Land Act, No. 926, and The Land Registration Act, No. 496, both of which were enacted in 1903. An attempt will be made in this paper to set out the salient features of these two laws.

Tenures of alienated Lands.—The Public Land Act creates four classes of alienated land, namely: (1) Land held under free patents

to Native Settlers. (2) Homesteads on the public domain. (3) Public land sold at auction. (4) Public land under lease.

Free Patents.—The free patent gives an absolute title to public land free of charge, and limited to sixteen hectares, or about forty acres, to

any native of the Philippine Islands now an occupant and cultivator of unreserved and unappropriated public land as defined by the Act of Congress of July 1, 1902, who has continuously occupied and cultivated such land, either by himself or through his ancestors since August 1, 1898; or who prior to August 1, 1898 continuously occupied and cultivated such land for three years immediately prior to said date, and who has been continuously since July 4, 1902 until the date of this Act an occupier and cultivator of such land.[1]

The cost of the survey of the land is borne by the Government, and no rent upon it is reserved by the Act. But the most striking feature of this tenure is that such lands

shall be inalienable and shall not be subject to incumbrance for a period of seven years from the date of the issuance of the patent therefor, and shall not be liable for the satisfaction of any debt contracted prior to the expiration of that period.[2]

Instances of legislation of this kind intended to foster agriculture and to protect from their own improvidence those members of certain communities, whose well-being is dependent upon their possession of land are to be found in several British Dominions, Possessions and Dependencies. Thus in Egypt, by Law No. 31 of 1912, properties of less than five feddans in area are unseizable in execution. Students of Indian Legislation are familiar with laws of this description. A recent instance is the Ajmer Alienation of Land Regulation,[3] which provides that land cannot be permanently alienated without the sanction of the Collector, and that execution sales of land cannot take place without the previous sanction of the Chief Commissioner. In the Federated Malay States "The Malay Reservation Enactment, 1913," provides that certain areas included within a "Malay Reservation" shall not be sold, leased or otherwise disposed of to any person not being a Malay, and that no right or

[1] S. 32 of the Public Land Act.
[2] S. 35 of the Public Land Act.
[3] No. 3 of 1914.

interest of any Malay in Reservation land shall be sold in execution of a decree to a person not being a Malay. The Homestead Acts in force in Australasia and Canada furnish instances of analogous legislation. But they seem to fall short in thoroughness of the Philippine law cited above, and the writer does not recall any instance where a British legislature has so wholly and courageously cast loose from that deep-seated faith in the sanctity of the doctrine of freedom of contract which, whatever its virtue in the British Isles and other countries where similar social and economic conditions obtain, has at times proved a false guide to those who would adhere to it throughout the length and breadth of the world's most heterogeneous Empire.

Homesteads on the Public Domain.—The tenure of these holdings corresponds to that which forms the subject of some of the Homestead Acts in force in the United States of America. No person may hold more than one homestead, and its area is limited to sixteen hectares. S. 3 of the Public Land Act upon this subject reads as follows :

> No certificate shall be given or patent issued for the land applied for until the expiration of five years from the date of the filing of the application ; and if, at the expiration of such time or at any time within three years thereafter, the person filing such application shall prove by two credible witnesses that he has resided upon and cultivated the land for the term of five years, immediately succeeding the time of filing the application aforesaid, and shall make affidavit that no part of said land has been alienated or encumbered, and that he has borne true allegiance to the Government of the United States, and that of the Phillipine Islands, then, upon payment of a fee of 10 pesos he shall be entitled to a patent.

Other important provisions are that such lands are not liable to the satisfaction of any debt contracted prior to the issuance of a patent therefor (s. 4) ; and that abandonment of the land for more than six months during the above-mentioned period of five years, renders it liable to forfeiture.

Sales and Leases of Public Lands.—Very little need be said upon the provisions of the Act as to the tenure of land acquired in either of these ways. We have here restrictions as to the area to be acquired similar to those in force in respect of land held under the two tenures already dealt with. One citizen may purchase sixteen

hectares, and a corporation may purchase 1,024 hectares. The title or patent to such land is not issued until after five years of occupation and cultivation of it, though residence upon the land is not necessary, as it is in the case of a homestead. Here again the law has been careful to provide that before the patent is issued, it shall be shown that the land has not been sold or the title to it in any manner encumbered (s. 17). Leases of public land are for twenty-five years, renewable thereafter for another term of the same duration. No person or corporation may hold upon lease more than 1,024 hectares, or about 2,530 acres, and a corporation may only use such land for the purposes for which the corporation was created.

Registration of Title.—The Land Registration Act of the Philippine Islands embodies most of the best known features of the Torrens system. Its terminology follows that of the American Torrens Acts rather than that employed in the Australasian Statutes, and many of its general provisions are taken direct from the Massachusetts Torrens Act of 1898. It is proposed here to mention only those features of the Act which differentiate it from the majority of the Torrens Acts in force throughout the British Empire.

Court of Land Registration.—Of first importance is the creation by the Act of a special "Court of Land Registration," which has exclusive jurisdiction over all applications for the registration of title to land, subject to a right of appeal to the Supreme Court. This Court has power to employ the services of an examiner of titles, and in respect of bringing land under the system performs the same functions as do Registry Officials in jurisdictions within the British Empire. A decree of registration made by this Court binds the land and is conclusive against all persons (s. 38); and every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith, shall hold the same free of all incumbrances except those noted on the said certificate (s. 39).

Voluntary dealing with Land after original Registration.—The provisions of the Act under this heading are very full. S. 50 provides that an owner of registered land may deal with it as fully as if it had not been registered, and "may use forms of deeds, mort-

gages, leases, or other voluntary instruments like those now in use" ; but a later section sets out short forms which may be employed and executed in the manner prescribed by that section. S. 50 clearly states that "registration shall be the operative act to convey and affect the land," and that a voluntary instrument purporting to affect registered land before registration "shall operate only as a contract between the parties and as evidence of authority to the clerk or registrar of deeds to make registration." If the phraseology of these sections might be improved upon, no exception to them can be taken upon the ground that their meaning is not plain. The writer's experience in Malaya leads him to doubt whether these provisions furnish a sufficiently strong motive to Asiatics to register their dealings with promptitude. In the Federated Malay States an attempt to deal with registered land without registering the transaction is declared by the Registration law to be null and void,[1] and by the Indian Registration Act, 1877, documents relating to land required by the law to be registered do not, unless registered, affect the land and are not received as evidence of any transaction affecting it. New certificates of title are issued upon a transfer of the land in fee.

All interest in registered land less than an estate in fee simple shall be registered by filing with the registrar of deeds the instrument creating or transferring or claiming such interest, and by a brief memorandum thereof made by the Registrar of deeds upon the certificate of title signed by him (s. 52).

Trusts and Conditions. — In treating this subject draftsmen of land registration laws must steer clear of two dangers. If all trusts, conditions and covenants affecting the land are noted very fully upon the register, it becomes too bulky and complex and the main objects of the system are not achieved. If, on the other hand, the entries in the register are confined to the simplest transactions in land there is ground for the criticism which has been made, that the Torrens system abridges and limits the power of a registered owner to dispose of his land. In this Act a medium course has been adopted, and both of these defects appear to have been successfully avoided. As in most of the Australasian Statutes, there is a prohibition against entering the particulars of a trust, condition,

[1] Registration of Titles Enactment, 1911, s. 5.

limitation or other equitable interest upon the certificate; "but a memorandum thereof shall be entered by the words "in trust" or "upon condition" or other apt words, and by a reference by number to the instrument authorising or creating the same (s. 65). Similarly an entry may be made on the certificate of the words "with power to sell" or "with power to mortgage," and by apt words of description in case of other powers. After these provisions follows a clause, which is of the utmost importance in the protection of beneficiaries under instruments of trust, namely,

> no instrument transferring, mortgaging, or in any way dealing with registered land held in trust shall be registered, unless the power thereto enabling is expressly conferred in the instrument of trust, or unless the decree of a Court of competent jurisdiction has construed the instrument in favour of such power, in which case a certified copy of such decree may be filed with the registrar of deeds, and he shall make registration in accordance therewith (s. 66).

The policy of the Act, as manifested by this clause, is in striking contrast to that of the English Land Transfer Act which, apparently, in cases where there are trustees imposes no duty upon the Registrar to check their dealings with registered land. The Act does not expressly provide, as do some of the Australian Statutes, that upon registration every instrument shall be deemed to be embodied in the register book as part and parcel thereof; but this would seem to be the real position.[1]

Transmission by Descent and Devise.—Heirs and devisees receive equal protection with *cestuis que trustent*. Thus sales and transfers of registered land by an executor or administrator in the course of administration for the payment of debts or for other purposes can only be made upon an order of the Court unless the executor is expressly empowered to sell (s. 91), and special provision is made to bring under the control of the Court the distribution to devisees or heirs of the registered land of a deceased (s. 97).

Conclusion.—The Land Registration Act is comprehensive, and appears to be easily workable. The writer is of opinion that useful additions might be made to it upon the following subjects: (*a*) *Notice.* Many Australasian and Canadian Torrens Acts provide, in effect, that knowledge by a person dealing with unregistered land of an

[1] See for instance s. 51.

unregistered interest and disregard of such interest shall not of itself be imputed as fraud. This Act contains no such clause. It is submitted that such a provision is of the greatest assistance in furthering the policy of all Registration laws, and is useful to the Courts in deciding whether any particular transaction is fraudulent or not. (*b*) *Mortgages.* Under this heading the Act provides a form by which, as in England, the borrower "conveys" his land to the lender. No mention is made of the "charge" of land by way of security for a loan, which finds a place in most Torrens Acts, and which is a transaction more in harmony with the general scheme of the system, than is the English mortgage. The "charge" seems particularly suited to an Asiatic country, where the law should be solicitous to safeguard landowners from their own ignorance and improvidence. In Malaya no land subject to a charge may be sold by the chargee, except upon the order of the Court, and the Court investigates the whole transaction before making such order. (*c*) *Caveats.* The word "caveat" is not used in the Act, but a clause headed "Adverse claims" deals with the matters which in most Torrens Acts come under a chapter treating of caveats. The clause in question seems to the writer to be meagre, but the working of such a provision may be facilitated by the following section in the Act. "S. 123. This Act should be construed liberally so far as may be necessary for the purpose of effecting its general intent." (*d*) *Adverse possession.* S. 46 of the Act provides that no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. Mr. J. E. Hogg has pointed out in an article in this Journal[1] the inconvenience of a bald provision of this kind without modification. He suggests, and the present writer respectfully agrees with him, that it is convenient, and in accordance with sound juridical principle, that a Land Registration Act should add upon this subject that where a person could, except for the provision mentioned above, have acquired a title to registered land by length of possession, subsequent to first registration and exclusive of any possession prior to first registration, he may apply to be registered as owner of the land in place of the then registered owner, and the register may be rectified accordingly.

[1] Vol. XV. p. 83.

NOTES ON INTERNATIONAL LAW.

Proclamations of Neutrality.—Students of international law owe very much to the publications of the United States Naval War College; and the latest publication, edited by Admiral Knight, contains a collection of documents bearing on the war which might escape the notice of English readers. Thus, there is a fairly complete collection of neutrality proclamations, which will be of great value to any one who does what has not yet been done—who traces the variations in the form of such proclamations since Washington's famous and much-controverted proclamation of 1793. They fall into two great groups—those which confine themselves to a general statement of intention to preserve strict neutrality, or refer to the provisions of relevant municipal law, or the Hague Convention as to the rights and duties of neutrals, and those which describe minutely the Government's intentions, and are of the nature of a code of neutrality. The declaration by the Argentine is an example of the first, that of Brazil an example of the second class. In the case of Chili there were issued a series of declarations, and there were also a number of official circulars and decrees. Thus there was a series of declarations and decrees as to wireless telegraphy, the purport of which will be apparent from the instructions to the director of maritime territory that "all vessels provided with radio apparatus, without distinction of nationality, which navigate in our territorial waters are forbidden to use the said apparatus. All national or foreign vessels remaining in a port more than four hours are required to remove the antennæ which will be placed with its gear on apparatus under official seal."

Armed Merchant Vessels.—What is a merchant vessel, and why does it lose that character by being armed? is a question never before so often or so clearly voiced as in this war. All neutral Governments have had to face it, and their solutions have not been the same. The most detailed and explicit test is that contained in the memorandum of the United States Department of State of September 19, 1914, which mentioned certain indications that a

vessel's armament is not to be used offensively: *e.g.* that the calibre of the guns does not exceed six inches; that no guns are mounted in the forward part of the vessel; that it is manned by its usual crew, and that the officers are the same as those on board before war was declared; that the speed of the vessel is slow. The objection to all such tests is that the equipment for defence must vary with, and be proportioned to, the probable means of attack, and that merchant vessels exposed to new weapons must provide themselves with more powerful means of defence. A sense of this has induced some Governments—*e.g.* that of Uruguay—merely to instruct the authorities to see that armed merchant vessels present sufficient guaranty of their true character. One of the circulars issued by the United States Government lays down this distinction: "A neutral Government may proceed upon the presumption that an armed merchant vessel of belligerent nationality is armed for aggression, while a belligerent should proceed on a presumption that the vessel is armed for protection. Both of these presumptions may be overcome by evidence—the first by secondary or collateral evidence, since the fact to be established is negative in character; the second by primary and direct evidence, since the fact to be established is positive in character."

Settlement of Frontiers.—At the end of the present war many State boundaries will be revised; in his book entitled *The Frontiers of Language and Nationality in Europe* (Constable & Co., Ltd.) Mr. Leon Dominian contends that this revision should conform with the claims of nationality, and that nationality is chiefly determined by language. In his opening chapter Mr. Dominian distinguishes "race," in the case of which the basis of differentiation is anatomical, from "nationality," which he defines as "the cultivated plant, blossoming on racial soil and fertilised by historical association." "Language" he regards as the cohesive power which cements "nationality," and which is itself moulded by the character and environment of the people by whom it is spoken. Mr. Dominian then traces the evolution of the existing nationalities and the Aryan languages of Europe from the "momentous meetings" of the Nordic, Alpine, and Mediterranean races, out of which sprang the Celtic, Teutonic, and Slavic groups of European peoples. In the succeeding nine chapters the writer delineates the linguistic frontiers of Europe, tracing the line of contact between Flemish and Walloon

in Belgium, between French and German speech along the Franco-German frontier, and in Switzerland, and between the Italian language and French, German and Slovene along the political frontiers of Italy. He mentions incidentally the national spirit of Switzerland to show that, although language is the principal factor in the development of nationality, and though it in its turn owes much to environment, "at bottom neither language nor physical or racial barriers suffice to constitute nationality." He discusses the language problem in Schleswig-Holstein, and in Norway, and describes Finland as a country of three languages—"Russian is the channel of official activity. Finnish [a Turanian language], through a literary revival, has won its right to be the language of the land and this is a symbol of the Finns' desire for independent national existence. Swedish remains as the age-old medium through which Christianity and western culture were conveyed." Around the Gulf of Riga two of the world's oldest languages are neighbours: the Esthonians speak a primitive form of Mongolian, while the Letto-Lithuanian group speak a language closely akin to old Aryan, and the peasants can understand simple phrases in Sanscrit. Mr. Dominian draws the boundaries of Polish speech, from the Jablunka Pass along the Carpathians to Dukla, then in a northerly direction through Russia to Suwalki, then westward through East Prussia, then northward to the sea about Danzig, then south through the German provinces of Posen and Silesia. A chapter is devoted to the area occupied by the Bohemian, Moravian, and Slovakian groups, and another to the Hungarian and Rumanian languages. In chapters IX. and X. the author, grappling with the Balkan problem, shows how the Balkan peninsula, by virtue of its geographical position, has afforded a natural passage for the westerly migrations of Asiatic peoples, and in this way he explains the mosaic-like appearance of its ethnographical map. He describes the Serbian linguistic area (for Croats, Dalmatians, Slavonians, Bosnians and Serbs all speak the Serbian language), as the political and physical link connecting central Europe with the Balkan peninsula, and he delimits the sphere of Greek, Bulgarian, Albanian, and Rumanian-speaking peoples in this area. In the next two chapters, a study of the geographical case of Turkey leads Mr. Dominian into a survey of the frontiers of language in Asia Minor. He finds the cause of Turkey's failure as a world power in its situation.—

"The country is an open road alongside or at the ends of which nationalities have blossomed. It has been the prey of invaders by which it has been overrun. The Turks find themselves on this land to-day because they are descendants of wanderers. They have occupied the road because they ignored the ways of stepping off its path."

Mr. Dominian alludes to the antiquity of the routes of trade and travel converging in Turkish territory, and to the conflicts between European and Asiatic peoples, immortalised in Greek literature, which took place on Turkish soil; and he describes the spheres of interest which modern European Powers have carved out for themselves there. The author divides the country of Asia Minor into six geographical sections; the coast fringe is largely Greek and Christian; the plateau of Anatolia is predominantly Turkish and Mohammedan; the mountain masses to the east of it are the home of Armenoids; the long corridor of Syria has a motley Semitic population, mostly Arabian in speech; the adjoining desert is tramped by the Bedouin Arabs; and the twin valley of Mesopotamia is the home of peoples in whom a fusion of Semitic and Indo-European elements is discernible. In a final chapter Mr. Dominian applies the conclusions which he has reached in the course of the book to the problem of Alsace-Lorraine, the aspirations of Italy, the case for a united Serbia, the proper delimitations of Hungary, and the creation of a Polish kingdom.

The book is fully equipped with valuable maps, and at the end of many chapters will be found appendices of great historical or statistical interest.

Piracy and Submarines.—The Federal District Court of New York has decided that the Cunard Steamship Company was not guilty of negligence in the matter of the sinking of the *Lusitania* by a German submarine, and the learned judge, Mr. Justice Mayer, upheld the contention of the British owners that the act was "an act of piracy and of the common enemy of mankind."[1] It is to be noted that this decision is in conflict with the view of the text-books as to piracy. In the books it is held that no act committed by the authority of an independent State can be piracy. The text-books give no authority for this view[2]; and in this connection attention may be directed to a

[1] The *Times* Newspaper, August 27, 1918.

[2] The depositions of piracy were discussed in the case of *The Republic of Bolivia* v. *Indemnity Mutual Marine Insurance Co., Ltd.* [1909] 1 K.B. 785.

paper read before the Grotius Society by Mr. J. E. G. de Montmorency, in which he contended that an independent State might be in law a pirate State, and cited the Barbary States as instances of this condition of things. These States were recognised by the European family of nations and by the United States as independent Sovereign States with which treaties could be concluded, but at the same time it was the practice to treat Barbary corsairs carrying the flags of their respective States as pirates. Mr. de Montmorency suggested that the German submarines should in the same way be treated as pirate crafts.

German Prize Law.—It is well known that the German Prize Courts, that is, the Courts of first instance sitting at Hamburg and Kiel and the *Oberprisengericht* at Berlin, have, in regard to many questions, proceeded on much the same lines as the English Prize Court. Thus they have, in the *Maria* and all cases relative to contraband goods, given a large interpretation to "enemy destination"; they have gone at least as far as, probably farther than, the English Court did in the *Kim* case. In regard to some minor points the German Courts have differed from the English decisions. Thus they have questioned the decisions in the *Miramochi* and *Roumanian* as not conforming to the "progressive views on international law prevailing prior to the present great war." The greatest difference, however, is as regards the law which the Prize Courts administer. In the *Zamora* the Judicial Committee held that the Prize Court administers, not national, but international law. In the *Zaanstom*, reported in Dr. Hullferich's and Mr. King's most useful account of "The Development of German Prize Law," a contrary doctrine is enunciated; the doctrine expounded in England is said to be "based on a misconception." It is somewhat incongruous that a country which professes to be an advocate of "freedom of the sea" should espouse a doctrine distinctly adverse to such freedom; a doctrine which makes each country free to apply in the Prize Courts what rules it pleases to adopt in its own interest.

The Effects of War on Private International Law.—In the *Harvard Law Review* (Issues of May and June 1918), appear two articles by Jules Valery, of the University of Montpellier, entitled "The World-war and its Effect on Future Private International Law." After briefly tracing the developments in private international law which

have resulted from the great world-conflicts of the past, the writer outlines some changes which are to be expected or desired as a result of the present war. He argues that, in view of the importance which nationality is seen to possess on an examination of the present situation, the anomalies of "absent" or "dual" nationality should be abolished, and that naturalisation, which should only be granted after formal renunciation by the applicant of his native land, prolonged residence, and public advertisement of the application, should only progressively entitle the naturalised person to full rights of citizenship.

He gives grounds for thinking that the nationality of a commercial house should be determined by its *situs*, and that the nationality of a partnership or limited company should be that of the country where its principal place of business is situate, and he suggests various safeguards designed to prevent the control of essential industries by companies dominated by foreigners.

In his second article, the writer considers how far foreigners should enjoy the rights of citizens, advocates the general acceptance of *jus sanguinis* as a test of nationality, and doubts the efficacy of international conventions as a means of ameliorating private international law, except in regard to certain matters which he discusses. He concludes with a happy reference to the benefits to legal science which will flow from the meeting of so many Allied nations on French soil.

Territorial Waters.—If the reader approaches Sir John Salmond's article on "Territorial Waters" in the *Law Quarterly Review* of July, 1918, in the expectation of finding an article on state sovereignty over territorial waters according to international law, he will be surprised, but not disappointed; because he will find a very valuable consideration of the purely British constitutional question how far the marginal and enclosed waters adjoining Great Britain and the territories of the British Empire are to be regarded under the law of the Empire as parts of the territory of Great Britain and the Dominions respectively. Sir John discusses the judgments in the *Franconia* case,[1] the Territorial Waters Jurisdiction Act of 1878, and the recent case *A. G. for British Columbia* v. *A. G. for Canada*,[2] and the questions raised by the Act and the decisions. He concludes that the present state of the law is unsatisfactory

[1] RV. Keyn 2 Ex. D. 63. [2] (1914) A.C. 153.

and inconvenient, that the Act should be repealed, and that more comprehensive provisions should be substituted. Sir John suggests a number of provisions which he considers might appropriately be made. But it would be most desirable that the Legislature, before framing new legislation on the subject, should consider very carefully the extent and nature of the rights over territorial waters possessed by the British Empire as against other States by virtue of the law of nations, and Sir John's proposals require detailed examination from that point of view.

The Work of the Carnegie Endowment Trustees.—The report of the directors of the Carnegie Endowment for 1918 is a record of work in very many directions, but particularly in regard to international law. This Trust, under the able guidance of Dr. James Brown Scott, has already done more, in the view of some, to facilitate the study of that subject than all the universities put together. The list of new works projected, and of reprints of classics of international law, is long; and there is an evident desire to bring within reach of all students works now very rare or written in languages known only to comparatively few. Perhaps some day the Endowment Trustees will take in hand a project to which the British Academy has given its approval, the publication of an *Encyclopædia of International Law*, carried out on a scale commensurate with the vastness of the subject, with due appreciation of the varieties of opinions and practices, and in a spirit different from that to be found in parts of Holtzendorff's well-known work. During the war such an undertaking could not, for obvious reasons, be accomplished or even begun. But the thinking out of a comprehensive plan might without delay be undertaken, and, with the assistance of the Carnegie Endowment, preparation might be made for the realising of that plan with the coming of peace.

Ambassadorial Privilege.—An interesting point of international law was taken before the County Bench at Kingston-on-Thames, on August 26, 1918, when an American subject, Mr. Lorenzo Chance, met a charge of obstruction and assault preferred by the London and South-Western Railway Company by the plea that, as an official of the American Embassy, he was entitled to immunity. The Counsel for the Company read a letter from the Foreign Office directed to be written by Mr. Balfour, which stated that, as the name of the defendant "has not been returned to this office by the United

States Ambassador as that of a member of his Excellency's staff, it does not figure in the list of persons who are entitled to claim immunity from legal proceedings in this country on the ground of diplomatic privilege." The fact of the assault on a station-master who had forbidden the defendant to cross the metals at Esher being proved, the defendant had to pay the maximum penalty of £5 including costs.

The law on the subject is, on the whole, clear. Hall writes: "A diplomatic agent cannot be tried for a criminal offence by the Courts of the State to which he is accredited, and cannot as a rule be arrested" (p. 182). But, as was pointed out in these columns recently in connection with the Swedish "Ambassador's Bag," there are grave cases in which arrest is inevitable, pending redress for crime against the State. Mr. Chance's offence was a minor one, and, had he formed part of the United States Mission, he would in certain circumstances have shared the Ambassador's immunity. The English local authorities claimed jurisdiction in the case of an assault committed by the coachman of Mr. Gallatin, the United States minister in London in 1827; and Mr. Hall doubts if the full immunity can be claimed for non-diplomatic members of the suite. Mr. Balfour's letter appears to support this position, at any rate to the extent that immunity is limited to a list of persons supplied by an Ambassador as members of his staff. Mr. Hall, however, points out that de Martens,[1] dealing with a Munich case of 1790, considered that a distinction between the members of a mission and the persons in attendance on them was inconsistent with usage, and inadmissible.

Double Nationality.—The difficult question of double nationality has arisen in a new form in connection with the registration of voters under the Representation of the People Act, 1918. Under the German "Delbrück Law" of July 22, 1903, which came into effect on January 1, 1914, dual citizenship is authorised by s. 25 (2) which provides that "citizenship is not lost by one who, before acquiring foreign citizenship, has secured on application the written consent of the competent authorities of the home State to retain his citizenship. Before this consent is given the German consul must be heard." On August 28, 1918, at the Islington Revision Court the registration officer decided that naturalised Germans were not disqualified as voters, despite the possibility that a naturalised Ger-

[1] *Précis* 219 n. and *Causes célèbres*, iv. 20

man might still be a German citizen. It was apparently contended that, " it was necessary for a German subject, before he could become a naturalised subject of any other State, to obtain a certificate of discharge from his German nationality."[1] That, however, is not the true construction of s. 25 of the Delbrück law. " A German who has neither residence nor permanent abode in Germany loses his citizenship on acquiring a foreign citizenship, provided that the foreign citizenship is acquired as a result of his own application therefor." The provision is followed by the exception set out above. The difficulty is that it is impossible for the Home Secretary to know, in dealing with an application for naturalisation, whether the applicant has received permission to retain his German citizenship under s. 25 (2) of the German law or has " reserved citizenship " under s. 20, or has secured " direct Imperial Citizenship " under s. 33 (2). It is clearly improper for a German citizen to have an English parliamentary vote, and, if the ruling of the registration officer to the effect that he cannot go behind the certificate of registration is upheld, it may be necessary to cancel by statute all certificates that have been granted to Germans since January 1, 1914.

The Meaning of Parole.—An important decision was given on September 1[2] by a Divisional Court (Darling J., Bray J. and Bailhache, J.) specially convened during the Long Vacation, on the legal significance of the international law term *Parole* in municipal law. The appellant, Mr. E. King, had been convicted by the Clerkenwell Stipendiary Magistrate of the offence of disobeying a calling-up notice under the Military Service Act, 1916. His defence was that, being at Hamburg at the outbreak of war in August 1914, he was detained by the German authorities, but in September 1914, on giving his *parole* on oath not to serve against Germany, he was allowed to return to England. When the Military Service Act, 1916, was before Parliament, he was informed by the War Office that he would not be called upon to do anything in violation of his *parole*, and when calling-up notices were sent to him he was told by the military authorities that he was exempt. The Crown, however, decided to prosecute the appellant on the ground that he had not been " captured or interned " within the meaning of the Military Service Act, 1916 (Session 2,

[1] *Times* August 29, 1918. [2] *Ibid.*, September 11, 1918.

s. 8), in the case of *Robinson* v. *Metcalf*[1] it having been decided that a man detained by the enemy for inquiries was not "a prisoner of war, captured or detained." A case was stated by the magistrate, and the Divisional Court unanimously allowed the appeal, expressing surprise that the Crown should have pressed the case. Mr. Justice Darling said that, in dealing with a people like the Germans, on whose word no reliance whatever could be placed, we should be particularly careful not to do anything to suggest that we were capable of encouraging our soldiers to break their word, even when given to Germans. Mr. Justice Bray said that he shared Mr. Justice Darling's surprise at the action of the Crown, and thought that the War Office had taken the proper view in their letter to the appellant. Mr. Hall[2] states that a pledge of the nature given in this case by the appellant "is understood to refer only to active service in the field, and does not therefore debar prisoners from performing military duties of any kind at places not within the seat of actual hostilities, notwithstanding that the services thus rendered may have a direct effect of increasing the power of the country for resistance or aggression. Thus, paroled prisoners may raise and drill recruits, they may fortify places not yet within the scope of military operations, and they may be employed in the administrative departments of the army away from the seat of war." But Mr. Hall's opinion was written long before the present war, and since, in view of the use of air-power, England cannot be considered as "away from the seat of war," it would seem that the English War Office was right in holding that the applicant was exempt from service altogether.

Mr. Justice Darling, in the course of the argument, followed Mr. Hall and the various authorities on which Mr. Hall based his view in declaring that the appellant was punishable with death if recaptured by the Germans, and would undoubtedly be shot. Mr. Pearce Higgins, in the seventh Edition of Mr. Hall's book, points out that "Art. 12 of the Hague Regulations merely states that he loses the right of request to be treated as a prisoner of war, and 'peut être traduit devant les tribunaux.'" This provision, however, does not exclude the death penalty, and it is satisfactory to have a decision of an English Appeal Court upholding the ancient and well-recognised law of nations as to *Parole* and practically incorporating it into English municipal law.

[1] 33 T.L.R. 542.

[2] *International Law*, 7th ed., p. 432.

NOTES ON CASES.

ENGLAND.

[*Contributed by* E. MANSON, ESQ.]

Punctuation in Legal Documents.—It used to be said that a man's title ought not to depend on a comma, and the practice of conveyancers in drafting has been to ignore punctuation. But, whatever the prudence of conveyancers may dictate, the Court cannot, as the observations of the Lord Chancellor and other Law Lords, in *Houston* v. *Burns* [1] show, ignore the effect of punctuation when it appears on the face of a document. Whether such punctuation takes the form of a comma, colon, dash, hyphen or parenthesis, it is part of the document, and must be given effect to in the interpretation of it. "Punctuation," as Lord Shaw well said, "is a rational part of English composition, and is sometimes quite significantly employed, and I see no reason," he added, "for depriving legal documents of such significance as attaches to punctuation in other writings." Did not the gentleman, *Nicholas Nickleby*, who was so insistent on the "unities" of the drama, write a pamphlet to prove that altering the received mode of punctuation would make any play of Shakespeare's quite different, and does not the misreading of an unpunctuated letter make all the fun of our oldest comedy, *Ralph Royster Doyster?* The gift in *Houston* v. *Burns*—which raised the question—was to "public, benevolent, or charitable purposes." Taken as they stand—with the commas—these words are not a good charitable bequest, because they would enable the trustee to spend the money on a variety of objects, such as a zoological garden, or an astronomical observatory, or a school of art, which may all be excellent things in their way, but are not charitable in the eye of the law. Eliminate the commas—read the words conjunctively—and the result is different, because it is then a gift for

[1] [1908] A.C. 337.

benevolent or charitable purposes of a public nature, which is charitable. The comma, however—which was the testatrix's own—negatived that interpretation. How little she dreamed that by that little comma she was defeating her own gift!

Bankers and Customers' Negligence.—Bankers, as it is, have to run many risks in their business. It would have added most seriously to their liabilities if they were held answerable where the customer had facilitated a fraud on them by such negligence in drawing a cheque as that in *London Joint Stock Bank* v. *Macmillan.*[1] The cheque there was drawn by a confidential clerk of the customer for petty cash, and brought to the customer for signature. The amount was not entered in words, but only in figures—£2. After signature the clerk fraudently filled in the cheque with the words "one hundred and twenty pounds," and introduced figures in the figure space to make it correspond. The bank cashed the cheque, and claimed to charge it against the customer's account. The clerk had absconded. On these facts it was clear that the cheque, when presented, was on the face of it a complete cheque, duly signed by the customer, and the bank had no means of knowing that it had been tampered with. "If," as the Lord Chancellor said, "the customer chose to dispense with the ordinary precautions because he had complete faith in his clerk's honesty, he could not claim to throw upon the banker the loss which resulted from his clerk's frauds." The Court of Appeal seem to have been led astray by the adverse criticism from time to time passed on *Young* v. *Grote,*[2] a very similar case. That case must now be taken as good law. There is a double duty on the customer of a bank to be careful in drawing cheques, not only for the protection of the bank, but because of the temptation which a carelessly drawn cheque offers to a clerk or payee. It is the sight of the means to do ill deeds which makes ill deeds done.

A Wife's Clothes and a Husband's Rights.—There is a common law obligation on a husband, as every one knows, to provide his wife with clothes suitable to her rank and station. But it will come as a somewhat disagreeable surprise to most wives to hear that this common law obligation can be satisfied by the husband merely lending the clothes and not giving them. Henceforth, then, let no person who is thinking of giving credit for a wife's silks and furs, and

[1] W.R. (1918) 656.

[2] 1829, 2 Bing, 253.

other costly apparel, take it for granted that these are hers and available—if the worst comes to the worst—as assets: for, *non constat*, the husband may not have stipulated—as it seems he is entitled to, *Rondeau le Grand et cie* v. *Maple's* [1]—that the wife's clothes shall be his, and that he shall be entitled to dispose of them as and when and how he pleased. The fateful hour strikes and Cinderella comes back, transformed from the court beauty to her seat at the humble hearth. The decision of the Court of Appeal flows naturally from the modern woman's emancipation. She is now free to contract with her husband as if he were a stranger, and if, in lieu of her common law right to pledge her husband's credit for clothes she chooses to agree to clothes he has bought for her being his, she ought not, of course, in reason to grumble, though the divestiture may not conduce to peace in the home.

There is an old ballad of a false knight who lures his lady-love to the top of a cliff to drown her in the sea; but, grudging that her silks and satins "should rot in the salt sea foam," he orders her to disrobe, to which she consents, if he turns his back to her—"it never became a gentleman a lady so to see": whereupon she seizes the opportunity, pushes her false lover over the cliff, and rides quietly home. A similar discomfiture is not unlikely to overtake a husband who exacts divestiture, unless he has a patient Griselda for a wife.

The Court of Appeal did not discuss what would have been the effect of the wife's bankruptcy on such a contract. It would make a good subject for a moot whether the clothes would not be goods in her order and disposition within the reputed ownership clause.

Fortune-telling and Intent to Defraud.—Is the "pretending or professing to tell fortunes" for gain in itself an offence under s. 4 of the Vagrancy Act of 1824, or must there be also an intent to defraud? Avory J. was of opinion, in *Davis* v. *Curry*,[2] that the mere pretending or professing was sufficient, but Darling and Sankey JJ. disagreed. The distinction is one which goes deep. From the conventional standpoint, Mr. Justice Avory's view is convenient as a protection of the public, because in nine cases out of ten such people are pure impostors; but imposture is by no means a necessary inference from the practice of fortune-telling. The art of divination, growing out of the longing to lift the veil of the unseen world, has prevailed in all ages and among all people—it has been practised

[1] [1918] 1 K.B. 75. [2] *Ibid.* 209.

"by saint, by savage, and by sage," and for the most part in entire good faith. The pythoness or priestess of the Delphic oracle may well have believed in her own inspiration. The hard-headed Roman augur had perfect faith—until Greek scepticism undermined it—in the pecking of the sacred chickens. The astrologer of the Middle Ages casting people's horoscopes under the guidance of the stars never doubted the teaching of his pseudo-science. Among the northern nations there is a general belief in the possession by certain persons of a faculty of second sight. Witness the character of Norna of the Fitful Head in Scott's *Pirate*. No one would have dreamed of calling her a cheat. Even the fortune-telling gipsy—now fast becoming extinct—was not a mere impostor. She was endowed with a gift of reading physiognomy and interpreting hints, and is not, as Novalis says, "character destiny." Of the latest type of diviner, the fashionable Bond Street palmist, and of her sincerity, perhaps the less said the better. Mr. Pickwick's apostrophe to Mr. Winkle after his performances on the ice at Dingley Dell strikes one as the most appropriate comment. But the outstanding fact is that on the subject of communication with the invisible world, in face of the spiritualistic phenomena recorded by the Psychical Research Society, and the avowed belief of many distinguished men in their reality, and in the plausible theories of thought transference and telepathic sympathy, modern science can only suspend its judgment and await more light.

Poisonous Yew-trees on Landlord's Property.—It would have been more satisfactory if, in the yew-tree case,[1] the facts had been more precisely ascertained. The lessee of the farm there complained that his mare had been poisoned by eating the leaves of an over-hanging yew-tree, which was growing on his lessor's land. The lessor's answer was: This is not the case of independent adjoining landowners, but of landlord and tenant. "The law of this country," to quote the words of Mellish L.J.[2], "is that a tenant, when he takes a farm, must look and judge for himself what the state of the farm is. Just as, in the case of a purchase of a business, the rule is *caveat emptor*, so in the case of taking the lease of property, the rule is *caveat lessee*—he must take the property as he finds it. I never heard that a landlord warranted that the sheep should not eat his

[1] *Chester* v. *Coles* [1918] 1 K.B. (C.A.) 247.
[2] *Erskine* v. *Adeane*, L.R. 8 Ch. 756, at p. 761.

yew-trees." That was a conclusive answer by the lessor if the yew-tree at the commencement of the tenancy was overhanging the farm; but the tenant rejoined: "I was only concerned to notice actual dangers. At the commencement of my tenancy the yew-trees may have been innocuous, but since then they have grown within reach of my horses, and for that negligence, resulting in the poisoning of them, the landlord was as much answerable as if he were an independent owner." The tenant's weak point was that he had not proved that the damage had arisen from a subsequent growth of the yew-trees. If evidence to this effect had been forthcoming, Sargent J. was by no means clear that the rights and obligations arising therefrom would not be regulated by those between adjoining landowners rather than by those between landlord and tenant.

Lost Capital and Dividends.—The inviolability of a company's capital is a fundamental principle of our company system. It is the price of the privilege of limited liability; but this does not mean that a company's capital may not be lost or reduced in the ordinary course of its trading. It is embarked in a commercial venture and it must run the risks incident thereto. That is every day's experience in the business world.

But supposing such a loss incurred—supposing a shipping company to lose half its fleet or a cotton spinning company to have one of its mills destroyed by fire uninsured. Can the company ignore the loss, and go on paying dividends out of profits—if there are any—or does this inviolability of capital require that the company should first apply its earnings in making good the loss on capital account? The Court of Appeal, in *Lee* v. *Neuchatel Asphalte Co.*,[1] held that there is no such obligation, and for a very good business reason, as Lord Lindley explained, if there were such an obligation it might preclude the company from paying dividends for an indefinite period, though its business as carried on with its reduced resources was a paying and profitable one. But it is quite consistent with this view that the company must, as a condition precedent to paying dividends, take steps to reduce its capital, and obtain the formal sanction of the Court to its doing so. Lord Davey—when at the Bar—advised that this was the proper course, and the dicta of the Law Lords in *Dovey* v. *Cory*[2] point in the same direction. It is rather a pity that the Court of Appeal in

[1] (1889) 41, Ch.D. 1. [2] [1901] A.C. 477.

The Ammonia Soda Co. Ltd. v. *Chamberlain* ([1918] 1 Ch. 266) did not deal more convincingly with these dicta, because all directors of industrial concerns are seriously concerned to know what is the right course to take.

There is no difficulty in a company obtaining the sanction of the Court, because where a company's capital has been "lost or is unrepresented by available assets," creditors are not affected, and there is therefore no necessity for the long procedure of an inquiry as to creditors—paying them off or obtaining their consent, as where creditors are affected. Its advantages are obvious. The financial situation is cleared and recorded in the minute filed with the order confirming the reduction and the profits appear in their true relation to the capital employed.

A distinction between "fixed capital" and "circulating capital" has been introduced into the cases; but it is misleading and fallacious. There is no such thing as "fixed capital." A company is formed with a subscribed capital of say £5,000 to carry on the business of making and selling boots and shoes. It invests £2,000 in long leasehold premises and machinery, and £2,000 in stock-boots and shoes, and the materials for making them. The leasehold premises would on the above theory be called fixed capital, the stock "circulating capital," and so it is, because every pair of boots or shoes sold is so much of the company's capital gone, but not lost because it is replaced by the price paid, which is reinvested in new stock. The leasehold factory is a wasting asset, which must be provided for by a sinking fund to make good the expended capital on expiration of the lease; but it is not "fixed capital" except possibly in the minds of the directors who may not think of parting with it. There is nothing to prevent the company changing the locality of its operations from, say, Northampton to London, and selling its factory, its so-called fixed capital, just as if it were a pair of its boots or shoes. It would be the same if the leasehold were a freehold; only no sinking fund would then be necessary unless the property were known to be depreciating.

AUSTRALIA.

[*Contributed by* JAMES EDWARD HOGG, ESQ.]

Legacies for Masses.—In England, even at the present day, Roman Catholics cannot leave bequests of money to be expended in saying masses for the repose of their souls. Such bequests are

invalid under the law relating to superstitious uses. This is not so in Ireland, and is in fact only so in England by reason of the existence of a State Church which—*quâ* Church—regards masses as superstitious. In Australia some doubt has been expressed as to whether the English or the Irish rule of law should be followed. In Australia—and indeed in the oversea dominions generally—there is no State Church. The doubt referred to has been resolved in the High Court of Australia by a decision to the effect that the Irish rule of law should be followed in Australia. Accordingly, a bequest of £50 for masses was held to be valid: *Nelan* v. *Downes*.[1] Curiously enough, the case was argued and decided on the footing of the bequest being possibly void for perpetuity, and this difficulty was overcome by the Court again following Irish cases, and holding that it was a charitable gift and so outside the rule against perpetuities. But a simple bequest of £50 to a legatee to be expended in having masses said cannot be considered as falling within the rule against perpetuities.

Definition Clauses.—The Australian Courts have given a decision on the effect of an interpretation clause in a statute which seems opposed to the canons of construction usually applied to such clauses. In a Stamp Act "settlement" is defined as "any contract or agreement" by which property is settled, the section containing the clause being prefaced by the words "unless the context or subject-matter otherwise indicates or requires." The question was raised whether a deed poll, exercising a power of appointment and appointing property for life with remainders over, was a "settlement": *Simpson* v. *Commissioners of Stamp Duties*.[2] The Supreme Court of New South Wales held, one judge dissenting, that the deed poll was not a settlement, because it was neither a "contract" nor an "agreement." On appeal this decision was—here also one judge dissenting—affirmed by the High Court of Australia: *Commissioners of Stamp Duties* v. *Simpson*.[3] A number of cases are cited in *Craies' Statute Law* (2nd Ed.) p. 211, in support of the proposition that interpretation clauses are not to be used so as to "prevent the operation of a word in its primary and obvious sense."

Meaning of "Insulting Words."—Another decision on the con-

[1] (1917) 73 C.L.R. 546.
[2] (1917) 17 S.R. (N.S.W.) 217.
[3] 24 C.L.R. 209.

struction of a statute in New South Wales is *Ex parte Breen.*[1] A New South Wales statute makes it an offence to use in public "any threatening, abusive, or insulting words." At an anti-conscriptionist meeting, where two or three hundred people were present, a speaker used these words: "Thirty thousand British women are behind the firing line in France doing servile work, and acting as concubines to the British officers." The Supreme Court held that the offence charged had not been committed, on the ground that the word "insulting" was only intended to apply to language "calculated to hurt the personal feelings of individuals" in whose hearing the language is used. This construction is one as to which opinions may reasonably differ.

What constitutes the "Crossing" of a Cheque?—There seem to be no cases in the English Courts as to what is a sufficient "crossing" of a cheque within s. 76 of the Bills of Exchange Act, 1882. It has recently been held in Australia that the question is one that may be properly left to a jury, and in the case referred to the jury were held to be justified in finding that the cheque was sufficiently "crossed": *Mather* v. *Bank of New Zealand.*[2] The crossing in this case is thus described: Following the payee's name "was a space of a little more than an inch, and across this space were two transverse lines, made apparently with the same pen and ink as the writing on the cheque, one inch and an eighth long, roughly parallel, slightly curved, and one-sixteenth of an inch apart."

INDIA.

[*Contributed by* Sir Ernest Trevelyan.]

Tiger Shooting.—In *Emperor* v. *Ambirsaheb*[3] the accused, finding that several of his cattle were killed by a tiger, armed himself with a gun and went in search of the tiger. He tracked the animal to a Government Reserved Forest, and there shot it.

He was charged with shooting an animal in a reserved forest without a licence, and was convicted by a magistrate. The conviction was upheld on appeal, and the Bombay High Court declined to interfere in revision. There seems to be little doubt that,

[1] (1918) 18 S.R. (N.S.W.) 1.
[2] (1918) 18 S.R. (N.S.W.) 49.
[3] [1918] 20 *Bombay Law Reporter*, 384.

having regard to the terms of the Indian Forest Act, and the rules made under it, the Courts were right in the view they took, but it seems monstrous that a cultivator cannot protect his cattle without getting a licence. To obtain a licence from the appropriate officer he may have to go a considerable distance, and to expend a considerable amount of time. Surely the authorities ought to alter the rules so as to deal with a case of this kind.

Property in Animals *ferœ naturœ.*—In a recent case [1] the Patna High Court has been considering rights of property in wild animals. A " rogue " elephant appeared in the plaintiff's forest and did considerable damage, killing a woman. The plaintiff gave orders to his *shikaris* (huntsmen) to pursue the animal and, if possible, to kill it. The *shikaris* succeeded in inflicting three wounds upon the elephant while it was within the plaintiff's forest, but the wounds did not cause the elephant's death. The elephant escaped from the plaintiff's forest, and entered the defendant's land, which was adjoining the plaintiff's forest. A few days after the plaintiff's *shikaris* entered the defendant's land without his authority and without his leave. They inflicted more wounds on the elephant, but did not kill him. Subsequently the elephant was found dead, lying within the ambit of the defendant's estate. It was held by the lower Court that the elephant died of gangrene, which probably set in as a result of the gun-shots which it had received. The plaintiff sued for the value of the elephant's tusks.

The High Court held that the plaintiff could not succeed, that the defendant, as owner of the soil, had a qualified property in the elephant, and that the plaintiff, who was a trespasser, could not acquire such right. The Court relied upon the views expressed by Lord Westbury and Lord Chelmsford in *Blades* v. *Higgs*.[2]

It is very doubtful whether, according to the law of India, the owner of the soil has, as such, any rights in wild animals. The English cases deal with rights in hares and rabbits.

It is in the interests of the public that tigers and rogue elephants should be destroyed. The rights of the destroyer to the skin of a tiger has never been disputed. If the *shikaris* had not received a licence to kill elephants under the Elephants Preservation Act,

[1] *Raja Kishore Chandra Murdraj* v. *Radha Gobind Das* (1917) Calcutta *Weekly Notes* [1918 Pat.] 232.

[2] [1865] 11 H.L.C. 621

1879 (Act VI. of 1879) the tusks became the property of the Government under Act II. of 1883. If they had such licence, would they not be entitled to the tusks?

EGYPT.

[*Contributed by* WILLIAM MAKRAM EBEID, ESQ.]

As is well known, the Egyptian judicial system comprises two categories of Courts: (1) Courts of real statute which are subdivided into Native and Mixed Courts, the former exercising jurisdiction over natives only, and the latter over disputes between foreigners of different nationality, foreigners and natives, and foreigners of the same nationality in regard to suits concerning real property in Egypt; (2) Courts of personal statute consisting of the Mehkemehs for Moslems, the Patriarchates for Christian natives and the Consular Courts for foreigners.

The Mixed Courts were instituted in 1875 under treaties entered into with fourteen foreign Powers, each of which is represented on the bench of these courts. They are Egyptian Courts and not international, as they are sometimes erroneously styled. Justice is administered in the name of the Sultan, and judges, European and Egyptian alike, are appointed by Decree. The Mixed Codes are based on the French Codes, but differ from them in many important respects. French case-law and commentaries are largely used in connection with their interpretation. The Native Courts were created in 1883 and the Native Codes were modelled on the Mixed Codes with some more or less important modifications.

Conflicts of jurisdiction have often arisen between these different categories of Courts, and this has given rise to an unsettled state of justice which it has hitherto been impossible for the Government to remedy, hampered as it is by the capitulation privileges of foreigners. Now, however, on the eve of the abolition of the capitulations, and of some new judicial organisation involving, in the main, the amalgamation of the Mixed and Native Courts, it may be of interest to notice a few of the more recent decisions of these Courts on questions of general interest. It is to be observed however, that these Courts do not accept the English idea of binding precedent.

The more important decisions of the Mixed Courts turn on points of private international law, and deal with such questions as the following:

Conflicts as to Nationality.—The Mixed Courts are practically unanimous in holding that the production of a certificate from the proper Consular authorities constitutes sufficient proof of nationality, in the absence of a contrary claim by another Government. Where, however, a contrary claim is made by another Government and a *conflit diplomatique*, as such disputes are generally called, ensues as to the nationality of a party, the question has arisen whether the Mixed Courts are competent to pronounce on these diplomatic conflicts, or whether the case should be suspended until the conflict is settled by diplomatic channels. Earlier decisions were in favour of the latter solution. But recent decisions take an opposite view, on the grounds that (1) a diplomatic conflict may drag on indefinitely and suspension of proceedings may therefore be unfair to the parties and constitute a "denial of justice"; (2) the Court, in deciding the dispute, does not really decide a *conflit diplomatique* or a question of public international law in the strict sense, but merely determines its own jurisdiction, and decides the question of nationality as a purely incidental or subsidiary point. The principal point at issue is the jurisdiction of the Court, and the decision on the question of nationality is only intended to bear on the principal question at issue, and cannot therefore have the effect of *res judicata* nor prejudice any future solution which may be eventually arrived at by diplomatic means.[1]

As the Mixed Courts now hold that they are competent to pronounce upon disputed questions of nationality, notwithstanding diplomatic conflicts, these questions are of course decided according to the accepted rules of Private International Law which the Courts have full power to interpret. So, too, where the conflict extends to the law applicable, the Mixed Courts are competent to interpret the laws in question, and to determine the extent of their application, provided, however, that such interpretation does not trench upon questions of personal statute, which questions are, as has already been pointed out, reserved to the Courts of Personal Status. The

[1] Cf. *Marie Debbane* v. *Eugénie Boulad*, April 26, 1917, *Bulletin de Législation et de Jurisprudence Mixtes*, Alexandria, xxix. p. 387; and *Vittoria Nacamuli* v. *Regina Handi*, May 25, 1916, *Ibid.* xxviii. p. 361.

question as to the law to be applied in cases of disputed nationality has arisen before the Mixed Courts in two main categories of cases, namely, cases of intermarriage between persons of different nationality (mixed marriages) and cases of alleged foreign companies established in Egypt.

Mixed Marriages.—Difficulty has arisen principally in cases of marriage between a European woman and an Ottoman subject. Does the woman lose her foreign nationality and become an Ottoman subject? The Mixed Courts were divided in opinion; but the better opinion now is that the European woman loses her own nationality in favour of that of her Ottoman husband. The grounds for this view, as laid down by the Court of Appeal in the case of *Mostapha Bey Wassef* v. *Caterina Penina*,[1] are as follows: (1) the Ottoman Law of Nationality, which implicitly provided that an Ottoman woman on marriage with a foreigner acquired his nationality, must be taken to adopt the principle that a wife acquires her husband's nationality; (2) the instructions issued to the Consulates of Turkey assert the Ottoman nationality of the foreign woman married to an Ottoman; (3) the official interpretation of the Ottoman law of nationality favours this view, and has not given rise to any protest by the representatives of the Powers. The fundamental general consideration was equity. To apply the principle of the wife's change of nationality, said the Court, when it is unfavourable to the Ottoman Government, and to refuse to apply it when it is favourable, would be not only to violate the principle of equity, which should govern the interpretation of international treaties no less than of private agreements, but also to run counter to the spirit of the law and the intention of the legislator.

Another difficult legal problem arising out of marriage between persons of different nationality was decided by the Mixed Court of Appeal in the case of Princess Saliha, reported as *Hussein Pasha Moharram* v. *Solomon Sasson and others*.[2] The case turned on the claim of an Egyptian Mohammedan princess to dispose of her personal property, after the Meglis Hasby (Court of Wards) had declared her a prodigal and placed her under curatorship. The real question at issue was the effect of her marriage with a Russian, who, in order to contract the union, had been converted to the Lutheran Church. According to Russian law the marriage was

[1] *Gazette des Tribunaux Mixtes*, v. p. 151. [2] *Gazette*, iii. p. 196.

valid, and the princess acquired her husband's nationality; and, accordingly, it was argued that she had ceased to be subject to the Mohammedan Court of Personal Statute, and her incapacity to dispose of her personal property disappeared. On the other side it was said that her marriage was altogether null, because by her personal law she was incapable of contracting marriage with a non-Moslem. She therefore remained an Egyptian, and the effect of the interdiction continued. The Mixed Court, holding that it was competent to determine disputed questions of nationality, decided that the woman was under an incapacity to marry, both by the Egyptian Civil Code (Art. 190) which regulates capacity by the national law of the contracting parties, and by the first article of the Hague Convention of 1902, for the regulation of conflicts of law in cases of marriage, which provides that the right to contract a marriage is governed by the national law of each of the future spouses. The Hague Convention was not applicable, as a Convention, to either Russia or Egypt, but it might be adopted as a kind of common law or *jus gentium*. The marriage being null, there was no change of the princess's nationality, because the Ottoman law, which provides that an Ottoman woman marrying a foreigner acquires his nationality, can only apply to valid marriages. It was regrettable that a marriage should be held valid in one country and null in another, but such anomalies were inevitable so long as there is not one single law or an International Court of Conflicts for the civilised world.[1] This decision has had a rather curious sequel. The Russian husband, in order to regularise both his own and his wife's position under Egyptian law, recently embraced Islam and brought an action before the Mixed Court of First Instance for the annulment of his wife's interdiction. The action was dismissed on technical grounds, but the marriage was now declared to be valid in Egypt.

As to what does or does not constitute a question of personal status in matrimonial matters, the Court of Appeal delivered an important judgment in *Re Eugénie Debbane* v. *Marie Debbane*.[2] The judgment begins by laying down the general rule that, where in the course of an action a question arises as to the matrimonial status of the parties, the proceedings should be interrupted until such prejudicial question is decided on by the com-

[1] Cf. Judicial Adviser's Report for 1915, p. 25. [2] *B.L.J.* xxviii. p. 211.

petent Court of personal status. The question so raised must, however, be one of personal status in the strict sense ; otherwise, if it is merely a question of private international law, the Mixed Courts are not debarred from jurisdiction. Such, for instance, is the question whether the law of the husband or that of the wife should regulate the respective rights of the spouse as to the marriage property, a question which clearly appertains to the domain of private international law. In the present case it was held that where marriage is contracted between persons of different nationality, the accepted rule of private international law, as laid down by the Hague Convention of 1905, is that, irrespective of the country in which the union was contracted, the husband's law should govern the matrimonial regime as to property. In *Marie Debbane* v. *Eugénie Boulad*, it was held that the question of the validity or otherwise of a marriage settlement is not a question of personal status, but is one of civil law lying within the jurisdiction of the Mixed Courts.

Nationality of Commercial Companies.—Under Arts. 46 and 47 of the Mixed Code of Commerce, joint-stock companies formed in Egypt are of Egyptian nationality, and must have their principal establishment in the country. The Court of Appeal has therefore held that the mere formality of a foreign incorporation is powerless to affect the Egyptian nationality of a company which has, *in fact*, been formed in Egypt, and has its principal establishment therein. Thus in a decision of February 9, 1916,[1] the Court of Appeal has held that a company, in order to be regarded as " genuinely English," must have been formed in England, under English law ; its capital must have been paid or contributed in England, and must be held, for the most part, in England ; the meetings of directors must take place in England ; and its principal establishment must also be in that country. If such company sets up an establishment for sale in Egypt, it must have a corresponding establishment for purchases in England.[2]

Domicil.—The Court of Appeal has held that a person's real domicil is the place in which he establishes his principal seat of business or habitation. In other words, the chief characteristic of a

[1] *The Yorkshire Engineering Company of Egypt, Ltd.* v. *Arthur Fendian*, *B.L.J.* xxviii. p. 143.

[2] Several conflicts of jurisdiction have arisen between the Mixed Courts and the British Consular Court as to the nationality of alleged British companies, for which see Judicial Adviser's Report for 1910, p. 23.

real domicil is its permanence. Accordingly where an Egyptian has, for political purposes, been exiled to Malta until the end of the war, he is not deemed to have changed his domicil in Egypt, since his sojourn in Malta is necessarily temporary. A summons regularly served on him at his real domicil in Egypt is therefore valid.[1]

In Egyptian law, where a person has no known domicil, the service of legal process may be duly made to the Parquet. A derogation from this principle has, however, been made in favour of persons resident in enemy territory. The Court of Appeal, in a decision of May 17, 1916,[2] has held that account must be taken of the present abnormal conditions created by the war, and that therefore an enemy person cannot be deemed to have been regularly summoned through the Parquet, where that latter authority itself asserts that it is impossible to acquaint such person with the summons directed against him.

Jurisdiction.—In *Re Nessib Geridini* v. *Nessim Geridini*,[3] the Court of Appeal held that the declaration of a British Protectorate over Egypt has not changed the personal status of Ottoman subjects resident in the country, and that, consequently, a dispute between two such Ottoman subjects lies within the exclusive jurisdiction of the Native Courts. This decision is interesting in view of the fact that no law has, as yet, been passed to determine Egyptian nationality after the severance of Egypt's connection with the Ottoman Empire.

While willing to concede to the Native Tribunals the right of exercising jurisdiction over all Ottoman subjects residing in the country, the Mixed Courts have, however, frequently asserted that they are the Courts of general jurisdiction in civil and commercial matters, competent between all foreigners, whether subjects of the Capitulary Powers that were parties to the *Réforme Judiciaire* or not Thus, in a case between Bulgarians and native subjects,[4] the Mixed Court of Appeal held that they were the competent forum. The Native Court of Appeal had previously held that the Native Tribunals were incompetent to decide a civil suit brought by a Bulgarian, because their jurisdiction was limited to disputes between natives, and Bulgarians were neither natives nor Ottoman subjects.[5]

[1] *Mohamed Abdel Rahman* v. *Jacques de Menasce*, *B.L.J.* xxviii. p. 404; cf. also *B.L.J.* xxix. p. 403.

[2] *B.L.J.* xxviii. p. 336.

[3] *B.L.J.* xxix. p. 403. [4] *Gazette*, v. p. 173. [5] App. January 13, 1915.

Another instance of the attitude of the Mixed Courts in jealously asserting their jurisdiction to the exclusion of other Courts is afforded by a decision of the Court of Appeal in November 1915,[1] declaring that a dispute between natives over lands which happen to be mortgaged to a foreigner must be brought before the Mixed Courts, even if the foreigner does not in any way intervene in the suit—a view which the Native Tribunals have refused to accept. This is a typical instance of what is commonly called the theory of "mixed interest," by means of which the Mixed Courts have been able to extend their sphere to all cases in which foreigners are interested, more or less directly, and which would otherwise have fallen within the jurisdiction of the Native Courts.

War Cases.—By a Proclamation of January 1915, all persons residing in enemy territory were declared incompetent to commence any civil suit before any Court in Egypt or to prosecute a suit already begun, whether by themselves or by an agent, subject to the right of the authorities to grant a licence to proceed. Within a few days of the issue of this Proclamation, it was held that the judge should strike out of the lists any case in which the plaintiffs were in enemy territory, even though the cause had already been pleaded and was ready for judgment.[2] Subsequent judgments made it quite clear that the alien enemy's incapacity to sue did not involve an incapacity to be sued, or to appear as a defendant in the Courts, otherwise the Proclamation would have the result of creating in their favour a privileged condition.[3] It was also held that the disability could not be invoked, as a ground for suspending an appeal, by an enemy firm which had appealed against a judgment ordering it to pay damages. And the position was not altered by the bringing of a counterclaim, when the merits of the case would lead the Court simply to affirm the obligation.[4]

In cases of companies and firms partly composed of enemy members, the Mixed Courts were careful not to enforce a rigorous application of the Proclamation, and drew the following important distinctions. In *Stern Bros.* v. *Aly Mohamed Saleh*,[5] the Court of

[1] *B.L.J.* xxviii. p. 25.
[2] *Princess Fatma Hanem* v. *Khedivial Wakfs, Gazette*, v. p. 192.
[3] Cf. *B.L.J.* xxviii, pp. 19 and 26 and *B.L.J.* xxix. p. 56.
[4] *Hamburg-Amerika Linie* v. *Munari, Gazette*, v. p. 142; cf. also *B.L.J.* xxix. p. 232.
[5] *Gazette*, v. p. 145.

Appeal, reversing the decision of the inferior Court, held that a firm constituted in Egypt with a majority of German members constituted a valid partnership under Mixed Law, although its claim to trade with limited liability failed, and that the character of the partnership and not of its members was alone to be taken into consideration. The result was that the association itself had a valid character and was an Egyptian juristic person, being incorporated under Egyptian law, and could, as such, carry on its business in Egypt during the war without regard to the personal status of its members. The same point was raised and similarly decided by the Court of Appeal in the case of *Siemens Schukert* v. *Alexandre Abskharoun*,[1] where the director of a firm was a German.[2] As a result of these decisions, a further Proclamation was issued in August, which provided that, as from a date to be subsequently fixed, persons of enemy nationality (including firms and companies in which a certain number of partners or shareholders were of enemy nationality) should no longer be authorised, during the continuance of the war, to carry on business in Egypt except under a licence. By a decision of March 22, 1916,[3] it is held that the grant of a licence for liquidation carries with it the right to sue so long as the liquidation continues.[4]

In this connection may be mentioned an interesting decision of the Court of Appeal in the case of *Lindemann & Co.* v. *Antoine Parachimona*,[5] emphasising the real object of Military Proclamations and other measures directed against enemy property or interests. "Military proclamations," says the Court, "are not so much directed against enemy property as against the usage which may be made of it to the prejudice of national or Allied interests. Accordingly, liquidation orders are intended to prejudice enemy trade rather than enemy traders." On that principle, the Court has held that a liquidation order may be set up by an enemy firm as a case of *vis major* exempting the firm from liability for non-performance. Apropos of *vis major*, the Court of Appeal has held in *Maurice Cohen & Co.* v. *Nellos Levy*,[6] that a circumstance which renders performance difficult or onerous without making it impossible, cannot be regarded as *vis major*. Accordingly, in a policy of maritime

[1] App. February 23, 1916, *B.L.J.* xxviii. p. 165.
[2] Cf. also *ibid.* p. 84.
[3] *B.L.J.* xxviii. p. 207.
[4] See also *ibid.* p. 165.
[5] App. December 13, 1916, *Gazette*, p. 40.
[6] *B.L.J.* xxviii. p. 260.

insurance "war risks" must be construed to mean accidents to the cargo by action of the enemy and not the difficulty or even the impossibility of finding boats for transport purposes.

Native Judgments.

The decisions of the Native Courts are of purely local or technical interest, and questions of private international law which arise so frequently before the Mixed Courts hardly if ever arise before the Native Courts. On the criminal side, however, the Native Courts have built up a body of case-law which compensates for their civil limitations, but is not of much interest to the English lawyer without some previous knowledge of the Egyptian criminal system. A few decisions may be noted on the question of jurisdiction and on that of the new offence of usury created by Law No. 12 of 1912, as being questions of present interest.

Jurisdiction.—The Central Court of Alexandria, sitting in appeal, held in a decision of December 1915,[1] that the Native Tribunals were incompetent to try a suit for partition, as between native co-owners, of a property mortgaged in favour of a foreigner, where it was stipulated that no partition should take place without the intervention of the mortgagee.[2] In a judgment of March 1916[3] the Court of Appeal has held that change of nationality during the course of an action cannot render the Native Tribunals incompetent, if a judgment has already been given by these tribunals in the suit. Thus, where an action is begun between natives, the Native Courts can retain and determine it, although, after judgment in first instance was given, the defendant has, in consequence of her marriage, become a Russian subject. The agreement of the parties to withdraw the case from the Native Tribunals and to submit it to the Mixed Tribunals can have no effect, the question of jurisdiction being a matter of public policy.

Usury.—The misdemeanour of habitually lending at usurious rates of interest is a continuous offence. Consequently, Law No. 12 of 1912, which provides punishment for it, is applicable to the case where payments of usurious interest were made subsequently to the date of the law, although the loans on which the interest was

[1] *Official Bulletin*, xvii. No. 30.
[2] Cf. *supra* on the jurisdiction of the Mixed Courts.
[3] *Ibid.* No. 85.

paid were prior in date thereto. The habit of lending at usurious rates of interest is sufficiently established by proof of two separate and distinct transactions, no matter whether the interest on both loans was collected at the same or at different times.[1] Another judgment of the Court of Cassation [2] throws further light on the new offence by extending it to all possible transactions under which usurious interest may be disguised. "Thus," says the Court, "the new law is applicable to the case of loans secured by pledge, where the debtor remains in possession of the property pledged, as lessee, at a rent which amounts to usurious interest."

[1] Cf. judgment of the Court of Cassation, *O.B.* xvii. No. 13.
[2] *Ibid.* No. 109.

NOTES.

Compilation of Statutes.—Mr. J. Christie of the Law Drafting Office, New Zealand, kindly sends the following explanatory note of the system of compilation under the Statutes Compilation Act, 1908 (New Zealand), to which Sir Courtenay Ilbert directed attention in his introduction to the last review of legislation.

"Prior to the enactment of the Consolidated Statutes in 1908, use was made of the system in several instances; notably in The Divorce and Matrimonial Causes Act, 1904; The Education Act, 1904; The Mining Act, 1905; The Coalmines Act, 1905; and The Public Works Act, 1905. The need for this system of legislation practically ceased to exist on the enactment of The Consolidated Statutes in 1908, and it was not made use of again until the enactment of The Land Transfer (Compilation) Act, 1915.

"The advantage of the system from the parliamentary point of view is the ease with which a compilation may be enacted; an official assurance that a bill is a compilation only (without any amendment of the existing law) is usually sufficient to ensure its passage through the 'Committee' stages without discussion.

"The disadvantage of the system is that it gives a new lease of life to anomalies and defects of the existing law. Much of the statute law now in force in New Zealand has come down, with piecemeal amendments, from early days; much of it is obsolete and obscure; the technique of the draftsmanship of the original Acts is often not harmonious with that of the amending Acts; and the work of satisfactory compilation is practically an impossibility. In most cases the system in question only results in continuing on the statute book faults of legislation and in needlessly postponing the necessary work of reconstruction. In other words, the advantages are solely the advantages of expediency; the disadvantages are essential and inseparable from the system."

Forged Cheques in the United Kingdom and Overseas.—The recent decision of the House of Lords in *Macmillan* v. *London Joint*

Stock Bank,[1] as to cheques fraudulently altered, will hardly tend (writes Mr. James Edward Hogg) towards uniformity in the commercial law of the Empire. This case now decides finally that the rule of law on this subject for the United Kingdom is that, as between banker and customer it is negligence, for the consequences of which the customer must answer, if a cheque is drawn with blank spaces which facilitate forgery. The rule, unfortunately, that has been laid down by the Judicial Committee of the Privy Council—and thus constitutes finality on this point for oversea Courts—is that the mere fact that a cheque is drawn with spaces that can be utilised for forgery is not in itself a violation of the duty of a customer towards his banker.[2] Where a cheque is drawn with available blank spaces, and these are utilised by a forger so as to increase the amount payable, the House of Lords now holds that the customer must bear the loss, but the Privy Council that the loss falls on the banker. This is a subject on which uniformity of law would seem to be particularly desirable, and uniformity throughout the Empire can now only be secured by legislation in each oversea dominion or legislative unit. It is true that the Privy Council does not refuse to reconsider its own decisions, whilst the House of Lords does refuse to do this. But until so reconsidered, the Judicial Committee's judgment stands good. The Privy Council case referred to affirmed the decision of the High Court of Australia, and it is remarkable that this decision was considered so unsatisfactory in at least one of the Australian States that it was in effect abrogated by an amending statute.[3] This particular provision, however, has not been reproduced in the present Australian Federal Bills of Exchange Act, which was enacted in 1909.

Crime after the War.—There is much speculation here, in France, and in the United States as to the probable amount of crime when peace comes. The experience of the United States at the close of the Civil War was that there was an increase in crime both in the South and in the North. The *North American Review* in 1866 drew attention to "the rapid filling up of our prisons with men who have seen service in the army or navy," adding that "at least two-thirds of the committants to the state prisons in the loyal

[1] *The Times*, June 22, 1918.
[2] *Colonial Bank of Australia* v. *Marshall* [1906] A.C. 559.
[3] (Queensland) Bills of Exchange Amendment Act of 1905, s. 2.

States were of this class." Miss Abbott, who contributes to the *Journal of the American Institute of Criminal Law and Criminology* a valuable study of the subject, notes the fact that Erasmus in his day dwelt upon this evil. Miss Abbott insists that these facts carry an important lesson for us to-day. To be forewarned is to be forearmed, and no reconstruction schemes will be complete which do not make provision to remove the temptations which will beset men released from severe discipline and a life of hardship to uncontrolled freedom.

Territorial Zones.—In many of the regulations and proclamations of Governments issued during this war as to neutrality, rules are laid down as to the extent of territorial waters. The three-mile line is not always followed. Thus Uruguay declares that territorial waters extend to a distance of five miles from the coast of the mainland and islands, " from the visible outlying shoals and the fixed marks which determine the limit of the lands not visible." The position of Chili as to this matter is somewhat different ; while the three-mile zone is considered as specially territorial the Civil Code declares that " the right of police in all matters concerning the security of the country and the observation of all customs laws extends to the distance of four marine leagues." As to bays the tendency in such proclamations seems to be to treat as part of territorial waters those with openings of not more than ten miles. But note is taken of bays or roadsteads not conforming to this condition, but regarded as territorial by custom.

The Press and Neutrality.—It is universally admitted that the subjects of neutral States are free to express their opinions as to the merits of the causes of hostilities, a right which is shared by editors of, or writers in, newspapers. It is a significant testimony to their influence that certain Governments, probably for the first time, have deemed it expedient to make special appeals to the newspaper press to exercise moderation in comments. Thus at an early stage in the war the Swiss Federal Council addressed " to each citizen, and particularly to the Swiss Press of all parties, of all languages, and of all regions an urgent appeal for moderation and reserve. It is the Press which expresses and directs public opinion. It has the noble task of confining unchained passion, of controlling the tendencies which divide and of exercising especially its influence, to moderate and conciliate." The Minister of Foreign Affairs of Colombia sent a special circular to editors inculcating " a course

discreet, correct, and moderate on the part of periodical publications whenever they treat of facts relative to belligerents" as "a kind of duty for neutral societies." The Minister suggests that observance of these duties have become part of international law and impose an obligation upon the most free Press. There are plenty of instances in which Governments have complained of the attacks of a foreign Press. The circulars referred to are a new departure likely to be imitated in any future war in so far as they appeal to conscience or good sense.

The Jubilee of the Royal Colonial Institute.—The Jubilee number of *United Empire*, the Royal Colonial Institute Journal, contains an interesting illustrated article by Mr. A. Wyatt Tilby, on the Jubilee of the Royal Colonial Institution, of which the Duke of Connaught is the President. The Institute, under the name "The Colonial Society," was founded at a meeting at Willis's Rooms on June 26, 1868. The description "Royal" was shortly after added by permission of Queen Victoria. The present title was adopted on March 7, 1870. The original membership was 174, and in 1880 the number had grown to a thousand. In 1882 a charter was granted. The local habitations of the Institute were many before it finally settled in Northumberland Avenue. The Institute was founded in a period of great colonial activity and development. The British North America Act had just been passed; five Australian States were formed; New Zealand was settling down to permanent peace; South Africa was revealing its possibilities and receiving young Cecil Rhodes, Livingstone was at Tanganyika. The Institute during this pregnant beginning was for the most part a learned society with a social side, a centre for discussion but not for politics. The business of the Institute was to diffuse "accurate information upon colonial subjects among our countrymen." This principle of existence was emphasised in the Charter of 1882. In 1909 the period of meditation ended. Major Boosé, sometime librarian and secretary, travelled round the Empire and advertised the Institute. In 1909 the membership was 4,500, 1914 it was 10,000, and in 1915 over 12,000. The Trade and Industry, the Imperial Studies, and the Empire Land Settlement Committees, and the formation of branches at home and overseas have been evidence of new activities. Mr. Tilby points out that "grave problems of growth and adjustment lie before the Empire in the next half-century, which will tax the wisdom of our statesmen and the common sense of our people to the utmost;

and, in the solution of these problems, it is our legitimate hope that the Royal Colonial Institute will take a leading part."

Mr. Frederic Harrison's Lectures on Jurisprudence.—From the *Canadian Law Times* we learn that the lectures which Mr. Frederic Harrison delivered when Professor of Jurisprudence at the Inns of Court are to be edited by Mr. Lefroy, K.C., the well-known Canadian lawyer. Though they date from 1878 and 1879, the memory of their fresh and original character still exists, and it is a pleasure to know that Mr. Harrison has at last complied with the request to republish them. Mr. Lefroy would do well—few would be more competent for the task—to tell us in his Introduction how jurisprudence has varied and what are the changes in its development since these lectures were delivered. They were the beginning of the reaction against Austin; among the first-fruits of the teaching of Maine, who inspired Mr. Harrison with a love of jurisprudence. How far has this reaction gone? Has it reached its limits? Is sociology now transforming jurisprudence in ways which neither Sir Henry Maine nor Mr. Harrison foresaw? What, if any, has been the influence of M. Tarde or Jhering? Or does English jurisprudence still preserve its insular character? Not the least interesting branch of such an inquiry would concern the question how far, if at all, the theoretical teaching of jurisprudence has exercised any influence upon the Bench. Undoubtedly such is the case in the United States, where the results of legal training given at Harvard and other law schools are to be detected in the American law reports.

Annual Report for 1917.—During the year 1917 Mr. Edward Manson was obliged to resign his position as Honorary Secretary of the Society on the ground of health. The Committee expressed "their gratitude to him for the invaluable services which he has for many years performed in that capacity, and hope that he may be able to continue his association with the work of the Society."

When the Society was founded more than a quarter of a century ago it was hardly anticipated that its work would be developed and supported throughout the Empire to the degree which it has attained at the present time. Much of its success has been due to the steady and sustained application of Mr. Manson to its interests as Secretary and Editor, with Sir John Macdonell, of the Journal. Mr. Manson's retirement necessitated a re-organisation of the arrangements in both departments of his work.

Mr. R. E. Willcocks, who had rendered untiring service as Assistant Secretary, was obliged to resign at the same time owing to his duties at the Admiralty.

It was decided to appoint Mr. C. E. A. Bedwell, who for some years had assisted with the editorial work, to be Honorary Secretary with paid clerical assistance.

The Committee appointed an Editorial Committee, upon which they retained the assistance of Mr. Manson and Lieut. Willcocks on the work of the JOURNAL. They decided at the same time that, in consideration of the present importance of the subject of International Law, further attention should be paid to it in the JOURNAL, and invited Dr. Bellot, Mr. J. E. G. De Montmorency, and Mr. G. G. Phillimore to join the Editorial Committee under the Chairmanship of Sir John Macdonell. The Committee, however, expressed their wish that this development should not affect in any way the primary objects of the Society, which are to publish an annual review of legislation and to record the development and working of the laws passed in the different parts of the Empire.

The annual statement of the accounts shows that the work of the Society has continued to receive a measure of financial support which, by a careful exercise of economy, enables these objects to be carried out, though this would not be possible without the voluntary assistance of a large number of contributors. The increased cost of production and the difficulty of securing contributions from writers whose time is much occupied under present circumstances has necessitated the postponement of the Committee's desire to issue the JOURNAL quarterly; but, so soon as conditions are more favourable it is hoped that the means will be available to carry out their intention, which, it is believed, will be generally welcome to the members of the Society.

It may be convenient to record here, though the event did not take place within the year under review, that, through the generous co-operation of the Masters of the Bench of the Middle Temple, it has been possible to secure a permanent home as an office for the Society at 1, Elm Court, Temple.

ABSTRACT OF RECEIPTS AND PAYMENTS FOR THE YEAR TO DECEMBER 31, 1917.

RECEIPTS.

	£ s. d.	£ s. d.
To Balance in hand at January 1, 1917		457 2 3
,, Amount of arrears collected in 1917		9 9 0
,, Amounts received for current year from		
(*a*) Law Society	21 0 0	
Lincoln's Inn	21 0 0	
Gray's Inn	10 10 0	
London Chamber of Commerce	5 5 0	
Royal Colonial Institute	5 5 0	
(*b*) Government Grants:		
1. His Majesty's Treasury	25 0 0	
2. British Possessions	123 1 3	
(*c*) Subscriptions	238 11 4	
		449 12 7
,, Sales		26 11 3
,, Subscriptions in advance		7 7 0
,, Interest on War Loan		5 18 2
		£956 0 3

PAYMENTS.

	£ s. d.	£ s. d.
By Publishing *No. XXXVI.*	130 15 4	
,, ,, ,, *XXXVII.*	204 18 0	
		335 13 4
,, Purchase £200 War Loan 5 per cent.		190 0 0
,, Fees to Assistant Editor and contributor		26 1 0
,, Petty expenses including stationery and postage		20 0 0
,, Rent of Chambers		20 0 0
,, Honorarium to Acting Assistant Secretary		20 0 0
,, Clerical Assistance		14 12 6
,, Subscriptions in advance		7 7 0
Balance in hand at December 31, 1917		319 17 11
		£956 0 3

NOTICES OF BOOKS.

LEGISLATIVE METHODS IN THE UNITED STATES.

Dr. Harlow's *History of Legislative Methods in the Period before* 1825 [1] is based on a doctoral dissertation written by the author in 1913 in one of the Yale Historical Publications, and is a careful and useful historical study of the kind which we often welcome from the University Presses of the United States. The aim of the volume, we are informed, is to trace the growth of legislative organisation, during the late colonial and early national periods of American history, outlining the development of the standing committee, and of the party machine as far as it operates within and upon the legislatures. The sources from which the author derived his information are described in a useful bibliographical note, which might, perhaps, have been expanded with advantage into a more comprehensive bibliography. First among these sources came the official minutes of the various legislative bodies which existed before the establishment of Congress, and the reports of debates in the federal House of Representatives commonly cited as the Annals of Congress. Sources of this class correspond roughly to the Journal of the House of Commons, and to our *Hansard* and its predecessors. These records show what new standing committees were created at various times, what kind of work was assigned to them, and what changes occurred in the relations between a committee and the assembly by which it was appointed. But the official minutes throw no light, and the debates very little light, on the personal and political forces which created and shaped these committees, and influenced and developed their work, on such potent institutions as the " Junto " and the Caucus, and on the party machinery by which the work of the legislatures and of the committees was usually controlled. For information on these topics recourse must be had to the correspondence, diaries, and newspapers of the day, and of these materials Dr. Harlow has made careful and instructive use. He has laid under contribution, not merely the familiar authorities for the period, but others with which writers and students on this side of the Atlantic appear to be less familiar, such as the lively notes taken by Fisher Ames of the proceedings in the first national House of Representatives.

[1] *The History of Legislative Methods in the Period before* 1825. By Ralph V. Harlow, Ph.D., Instructor in History, Simmons College. (Yale University Press.)

Every Assembly, legislative, executive or deliberative, public or private, must, unless its numbers are very small, do its work through committees. The early American assemblies experimented with many kinds of committees. They sought suggestion and guidance from different traditions, usages, and practices. Some of them, like those of Virginia and New York, were much influenced by English precedents. In New England, which in matters political as well as in matters religious represented the "dissidence of dissent," the descendants of the Puritan colonists had never formed the habit of looking to England for guidance in anything. In a later generation Gallatin would, it may be surmised, seek inspiration from Geneva rather than from Westminster. Accounts of all these experiments are to be found in Dr. Harlow's pages. But, as he usefully reminds us, "in the case of these early bodies, as in Congress itself, it is essential to remember that there were generally to be found two different types of organisation, the formal committee system on the one hand, and the party machine on the other," and that, "of these, the latter was infinitely the more important."

The remark which applies to the formal committees of these assemblies applies also to the constitutions of the several States and of the United States in which they are incorporated.

Although all these constitutions, both state and national, were based largely upon colonial and contemporary precedents, there was one striking omission. There is not a reference in any of them to the political party. They furnish the framework of government, and provide for the necessary number of departments and officials, but they disregard the very agency that made possible the successful working of the whole system. The fact that party organisations dominated colonial governments apparently escaped notice. It may be that because there was only one party during and for a time after the war, the conventions felt that the days of such activity were over. Or their neglect may be accounted for by an impression that parties were things of ill repute, forces of the under-world of government, known to politicians, but not referred to in the polite society of respectable statesmen. Whatever may have been the reason, the constitutions were permeated with that eighteenth-century obsession that all government, like ancient Gaul, was divided into three parts. Executive, legislative, and judicial departments were only created and separated, but the first two proved to be in the future as they had been in the past merely the instruments of the majority party. As left by the Constitution, the government was externally complete, but sadly lacking within, like a motor car minus the engine. It might be added that this defect, undeniably a vital one, was subsequently remedied by Alexander Hamilton.

At the present day, the American principle of separating legislative from executive functions still draws the sharpest distinction between American and English legislation. In the British Parliament all the

more important legislation is now initiated and prepared by the executive government. In the American Congress the executive takes no ostensible part in the preparation, introduction, or passing of legislative measures. The executive has no formally authorised representative in the legislature, and when it acts, and it often exercises very potent action, it acts indirectly through channels of influence which are not openly recognised, and which are sometimes regarded with much jealousy and suspicion. The standing committee system was perhaps intended to make the legislature independent of the executive. But as time went on, it was found that the system might be used to operate as a link between the legislature and the executive. Dr. Harlow's concluding words may be quoted as showing how, in his opinion, the system works in practice:

> As it is, and as it has been for a hundred years, the organisation of the House permits the application of powerful executive pressure, and in fact the wheels of the government have never run more smoothly than when the president has been in a position to drive Congress. When party lines are tightly drawn, and when executive and legislature are politically friendly, the committee system works well, because under such conditions there is co-operation and responsible leadership. At other times the division of the House into fifty or more committees tends to prevent the enactment of any carefully prepared legislative programme. The system is essentially a practical, not an ideal, solution of governmental problems, for which the Constitution must be held responsible. Before it can be changed very much the organic law must provide for a more definite connection between executive and legislature, and in addition must take into account the important position of the political party.

Dr. Harlow's book may be treated as a supplement to Dr. Jameson's article on the origin of the standing committee system in the *Political Science Quarterly* of 1894, and might be used as an historical introduction to the descriptions of Congress procedure given by President Wilson and Lord Bryce. For either purpose it merits careful study.

C. P. I.

DOCUMENTS ON INTERNATIONAL LAW.

Among the many benefits which the Carnegie Endowment has conferred upon students of international law, none is greater than the publication of this volume,[1] which gives not merely the texts of the conventions and declarations of the Hague Conferences of 1899 and 1907, but also the principal documents relating or leading up, thereto. The *Procès-verbaux*

[1] *The Reports to the Hague Conferences of* 1899. Edited with an introduction by James Brown Scott, Director of the Carnegie Endowment for International Peace. Division of International Law. (Oxford: at the Clarendon Press.)

of the former and the *Actes et Documents* of the latter are contained in volumes too numerous and ponderous to be readily consulted; and the editor, Dr. James Brown Scott, has made lawyers his debtors by compressing into one volume the substance of many hundreds of pages. The book is for the most part an exact and colourless epitome of what was done, or proposed, at the two Conferences. The author rarely expresses his own opinion; he has merely added a few footnotes. As to one point, not directly affecting this volume, but touching a matter of policy of future importance, there may be some dissent. Dr. Brown Scott admits that the unanimity rule, adopted at both Conferences, caused inconveniences, especially when a handful of States stood in the way of projects which a large majority of delegations wished to adopt, and, by standing upon their rights, prevented the majority from adopting them, and, although the States objecting would not have been bound thereby, Dr. Scott justifies the rule as meet and proper for an international, as distinguished from a legislative, assembly to which "the State sends its representative to confer, not to be outvoted, otherwise the State would refuse the invitation, as it is free to do since it is not of the nature of a summons": reasoning to which exception might be taken; reasoning which would be strongly dissented from by many who attended those Conferences, and who think that such a rule must be abandoned if real business is to be done. The fact that a few South American Republics could, if so minded, obstruct the adoption of a rule as to maritime affairs in which they had only a remote or indirect interest themselves might invest the whole proceedings with an air of unreality.

In editing the official documents, one or two innovations have been introduced for cogent reasons. Thus "population" is rendered by "population" instead of "inhabitants," as in the official translation; and in some other slight respects it has been departed from. The conventions were founded on reports. In the case of all changes it has been sought to carry the English phraseology back through the reports to the original proposals, and thus to place before the reader identity of form in English when such identity obtains in the original French.

Only those who have toiled through the *Procès-verbaux* or *the Actes et Documents* can appreciate the value of this epitome; they only will realise fully the aid which it will give in determining the exact meaning which the various Powers attached to the articles which they signed, with or without reservations. It is the fashion at present to belittle the work done at the Hague, just as for a time it was too common to speak confidently of the great work for the world which had there been accomplished. But, for good or evil, these assemblies were memorable events in European history, with, it may be, great consequences for the future. Such a work as this and the *Diplomatic Documents relating to*

the Outbreak of the European War, *The Survey of International Relations between the United States and Germany*, and the *Controversy over Neutral Rights between the United States and France*—all of which we owe to Dr. James Brown Scott—lighten the task of the student, sometimes appalled at the rapid and crushing accumulation of documents. They also enable him to appreciate the great moral issues with which they are concerned. We are tempted to quote the mottoes which Dr. Scott has prefixed to one of these volumes. The first is from Frederick the Great; "Know once and for all that, in the matter of king-craft, we take what we can, and that we are never wrong unless we have to give back what we have taken." The second is from Albert Gallatin, the American diplomatist: "The true honour and dignity of the nation are inseparable from justice." With all their shortcomings which this book has revealed, these Conferences, and, indirectly, these records of them, hasten the triumph of the latter principle and the downfall of the former.

A LANGUAGE OF ASSAM.

A TREATISE on a hitherto little known language, that of the Tāngkhul Nāgas, a people inhabiting the State of Manipur in Assam,[1] has been published by the Government of Assam. It is a comprehensive work, containing an account of the pronunciation, a grammar, tables of money, weights and measures, lists of phrases and proverbs, and a good-sized dictionary.

The grammar proper is treated in considerable detail and in a manner easily to be understood. More than two pages might have been devoted however to syntax, which we are told plays an important part in the construction of the language. A specially satisfactory feature of the work is the large collection of complete sentences given in illustration of the grammatical facts.

Exception must be taken to the section on pronunciation. The author follows the time-honoured but fallacious plan of identifying almost all the speech-sounds of the language with English sounds. Like so many other writers on Eastern languages, he does not appear to have heard of phonetics or of any of the modern improved methods of describing and teaching pronunciation. He tells us that there are significant word-tones in the language, but he gives no proper description of them, nor does he use any tone-marks in his system of writing the language. The reason he gives for not doing so (that "these differences can only be properly learned by ear") is one that will not pass muster now-a-days.

[1] *A Tāngkhul Nāga Grammar and Dictionary*. By the Rev. W. Pettigrew. (Printed at the Assam Secretariat Printing Office, Shillong, 1918. Price 4*s*. 6*d*.)

But apart from the section on pronunciation, the book forms an excellent introduction to what appears to be a very interesting language. The amount of labour expended on it has evidently been immense, the work is in the main pioneer work, and the author is to be congratulated on having made an important and valuable contribution to our knowledge of the languages of the East.

D. J.

THE MERCANTILE LAWS OF CANADA.

In Mr. Anger's digest of the mercantile laws of Canada and Newfoundland [1] there is much to interest the student of comparative legislation, for within the convenient compass of the volume is exhibited the process by which a community which has inherited the English Common Law is modifying that body of law by legislative enactment.

The greater part of the book might pass for a summary of English law, but certain of its paragraphs enable us to see how various sections of the Canadian community have presented special problems for solution by the Dominion Parliament or the various Provincial Legislative Assemblies. Conspicuous among them are the Indian, the agricultural interest, and the rapidly growing body of industrial wage-earners.

The Indian, it seems, has been made a ward of the Crown and incapable of binding himself by contract, although the other party to a contract with an Indian is held to his bargain; and the farming implements of an Indian as well as his stock have been declared free from liability to seizure for debt.

In the Prairie Provinces the sale of farm implements and machinery has been made the subject of special statutory requirements; and in the various Bank Acts are included provisions permitting loans to farmers on the security of stock or future crops, but otherwise the mortgaging of crops is hedged about with difficulties.

In the department of industrial legislation it will be found that Canada has taken an especially bold line. The Mechanics' and Wage-Earners' Lien Act gives workmen a lien in respect of their remuneration upon the building, mine, or land on which their labour has been bestowed. The Workmen's Compensation Acts which are coming into operation in the different Provinces show a tendency to replace the Court by a Workmen's Compensation Board. The Dominion Alien Labour Act makes it unlawful to assist or solicit the importation or immigration of any alien into Canada under a contract of service previously entered into.

[1] *Digest of the Mercantile Laws of Canada and Newfoundland.* By W. H. Anger, B.A., and H. D. Anger, B.A., Barrister-at-Law. 280 pp. (Toronto: W. H. Anger. 1917.)

A disposition to insist on the registration of transactions is everywhere apparent. Written agreements for the sale of goods, conditional sales (familiar in England as hire-purchase agreements), the formation and dissolution of partnerships, and leases, are instances of legal relationships which must be recorded in the prescribed manner for the information and protection of third parties.

Another interesting feature of Canadian legal history lies in the existence, side by side with the English Common Law system, of the old French law with its foundation of Roman law. It accordingly has to be remembered, in the case of Quebec, that negotiable instruments are not subject to the rules of law which are observed in the other Provinces, that the "chattel mortgages" of the other Provinces are unknown, that a mortgage of real property cannot be foreclosed, that as between husband and wife there may be community of goods, and that watered stock is prohibited—to mention only a few of the matters in regard to which French Canada is a law unto itself.

In general, the book is very well done. Its arrangement is convenient, it includes a useful sprinkling of forms and precedents, and there is abundant evidence that the authors are experienced in the application of legal principles to practical affairs. The authors are, however, curiously indifferent to the citation of authorities: occasional references to statutes or decided cases are dropped in in the most casual manner; and to cite as the authority for a proposition relating to the powers of directors of companies the one word *Halsbury*, is certainly not a method of text-book compilation which will commend itself to that distinguished lawyer.

C. M. KNOWLES.

ALSACE-LORRAINE.[1]

THE problem of Alsace-Lorraine will be one of the most difficult for statesmen of the belligerent nations to determine at the close of the war. Dr. Coleman Phillipson's book will afford material help in its consideration. He has dealt with the problem historically, legally, and politically. No date, he shows, can be regarded as the point of departure from historical claims without its leading to a maze of absurdities and impossibilities. He comes to the conclusion that the annexation of Alsace-Lorraine after its conquest in 1870 and its formal cession by the Treaty of Frankfort in 1871 was a valid act transferring the legal title of France thereto to Germany. On this ground, the Germans have denied

[1] *Alsace-Lorraine, Past, Present, and Future.* By Coleman Phillipson, M.A., LL.D., Litt.D. (London. T. Fisher Unwin, 1918. 25*s.* nett.)

that there is any question at all; but German assertions and arguments are not necessarily sound. When, elsewhere, the author regards this transaction as having been "solemnly and voluntarily" effected by the French Government of that day, he disregards the fact that it was not a voluntary act: the alternative was the continuation of the war by the French, then a defeated nation. Nor does adequate weight appear to be assigned to the French attitude. But much has happened since 1870–71. The Germans have dominated the territories, and have found the value of the coal and iron in them. The events of 1870–71 have partly lost their force. The *revanche* ideal is said to have passed away until it recrudesced with the present war. An autonomist movement was developed. Dr. Phillipson passes in review various solutions suggested for the future of Alsace-Lorraine such as—reannexation to France, autonomy within the German Empire, Alsace-Lorraine as an independent State, Partition, alteration of boundaries, and finally concludes that, to carry out the modern idea of self-determination of peoples, a compromise is necessary. Although France, Germany, and leading Alsatians object on various grounds to a plébiscite, Dr. Phillipson advocates its adoption (after two or three years) and expresses a belief that it would result in favour of a neutralised independence of these provinces. His statement of the problem and the issues is clear and valuable, and should be studied by all who take interest in questions arising out of the war.

C. E. Buckland.

ARGENTINE CIVIL CODE.[1]

The Comparative Law Bureau of the American Bar Association (Foreign Civil Code Series) have made a valuable addition to the library of the student of Comparative law, prefaced as it is by a concise explanatory introduction by Professor P. T. Eder, who with Messrs. R. T. Kerr and T. Whelers constituted the Revision Committee of the translator's work. The Constitution, largely modelled on that of the United States, was adopted in 1863: and it was followed by a series of codes, intended to take the place of the old heterogeneous collections of law which composed the common law of the former Spanish Colonial dominions in the Americas. These are the laws of the Indies and the general body of Castilian laws due to Queen Isabella's patronage of Columbus' voyage of discovery to America, comprising among others the Nueva Recopilacion de Leyes (1567), Leyes de Toro (1505), Fuero Viejo of Castile (1356),

[1] *The Argentine Civil Code, together with Constitution and Law of Civil Registry.* Translated by Frank L. Joannini. The Boston Book Company, Boston, U.S.A. 1917. 732 pp.

Ordiniamento of Alcala (1386), the Visigothic Code or Fuero Juzgo (5th century A.D.), the Fuero Real or Fuero de las Leyes (1255), the Siete Partidas (1263) which became positive law by virtue of the Ordiniamento of Alcala, providing that questions not settled by the laws of Alcala or the Fuero Real or the *Fueros* of particular localities, should be solved by the Siete Partidas and the Nueva Recopilacion of 1805.

The Code, which came into force in 1871, follows the usual lines of classification in its four books: the first, dealing with persons in general and personal rights in family matters, *e.g.* legitimacy and legitimation, marriage, illegitimacy, and tutorship and curatorship; the second, personal rights in civil relations, contracts and torts, donations, agency, etc.; the third real rights, possession and ownership of property in its various forms; and the fourth class, successions.

"Civil law" is defined by Professor Eder as a concept which can best be arrived at by elimination of what it is not, rather than by affirmation of what it is (*i.e.* not public or penal or commercial law); and its object in the Argentine codification is the regulation of the two leading social institutions, the family and property in the largest sense as equivalent to patrimony. But the Civil Code is not the sole source of the civil law, for its sixteenth article provides that if a question of civil law cannot be decided either by the text or the spirit of the law, then it must be according to the principles of analogous law, and if still doubtful, then by the general principles of law, taking into consideration the circumstances of the case. A feature of the Code is its definite provision for the Private International Law side of the subject, *e.g.* its application to foreigners domiciled or transient (Art. 1), and the capacity of persons domiciled in the Republic, nationals or foreigners, even in respect of acts performed or property situated abroad and vice versa (Art. 6), the governing law for acts, contracts and rights, for real and movable property, the forms of contracts and public instruments, and the application of foreign laws (Arts. 8–14), and similarly juristic persons which include foreign states and their domicil (Arts. 34, 44). There are numerous points of interest in the Code as compared with our own law: to take only the last book dealing with successions, there are the rights of natural children to share in their intestate father's estate, the restrictions on alienating property by testament or *donatio inter vivos* and disinheriting ascendants or descendants, except for specific causes; and the various forms of will, the autograph, the "open" or "public" and the sealed or private will.

Some criticism of the translator's equivalents for the Spanish terms may be offered: *e.g.* the rendering of *forzosos* by "forced" instead of "necessary" heirs, as used by Burge in his Commentaries (First Edition): *res in commercio* and *extra commercium* by "things in commerce," and "out of commerce," which though sanctioned by precedent give a

different impression from its meaning of things capable of being the subject of individual ownership and transfer; *prestacion* by "prestation," which implies the performance of something promised or consideration; *perdidas y intereses* by "damages" instead of its literal meaning "losses and interest."

But as a whole the book—which has also the advantage of a handsome dress recalling pre-war days—is an important contribution to the literature of the subject, and will be welcomed by all interested in the closer approximation of systems of law on general lines.

G. G. P.

REVIEW OF LEGISLATION, 1916

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REVIEW OF LEGISLATION, 1916.

INTRODUCTION.

[*Contributed by* Sir Courtenay Ilbert, G.C.B.]

The war has delayed the publication of our annual Review of Legislation, and nearly two years have elapsed since the close of the legislative year under review in this number.

During the later months of 1918 events have moved with startling rapidity, and much of the legislation of 1916 has already passed into the region of history. To some the bewildering multitude of statutory regulations in which "Dora" played a leading part will soon have the appearance of episodes in an evil dream.

The compiler of the summary of United Kingdom Legislation in 1916 divided his subject matter into two parts: Ordinary Legislation and War Legislation. This division is convenient for some purposes, but it is necessarily imperfect, and is sometimes misleading. Peace measures and war measures, permanent and transitory provisions, are to be found combined in the same statutes, and much of what is described as "General Legislation" arose immediately out of the circumstances and conditions of the war. Under the head of general legislation not connected with the war may be noted the Larceny Act of 1916, which continued the useful task of consolidating the scattered provisions out of which a comprehensive Criminal or Penal Code may some day be built up. The amending Government of India Act improved the great consolidating Act of 1915 by incorporating in it provisions which in the previous year had been thought to fall somewhat beyond the province of consolidation. An Act with the cumbrous title of the Police Factories, etc. (Miscellaneous Provisions) Act, in the course of its range over a wide field, made provisions tending to raise the standard of health and comfort in factories and workshops. British self-governing dominions may

be interested in the alterations which were made in the management of the Imperial Institute. The Legislature found time to regulate "irregular" marriages in Scotland, and to give further facilities for marriage of British subjects outside the United Kingdom.

The transitional character of some of the measures classed under the head of "general legislation" is illustrated by the successive Acts for prolonging the existence of the Parliament which has recently come to an end, and by the Acts for creating new Ministries, such as the Ministries of Pension, Labour, Food, and Shipping, and for absolving temporarily new Ministers from the requirement of re-election.

Of the war measures proper the most important was the Military Service Act of 1916, which became law on January 27, 1916, at the end of the long session begun in November 1914, and which introduced conscription into English law, but only as a temporary measure. The Act brought into the Army, for the period of the war, all male British subjects, with certain exceptions, who on specified dates in 1915 were between the ages of eighteen and forty-one and were without a wife or dependent children. Besides setting out the exceptions, the Act laid down statutory grounds of exemption and set up local tribunals to determine the validity of those grounds. A later Act of the following session, passed in May 1916, extended the obligation to military service to boys attaining the age of eighteen after the date specified in the earlier Act. The other war measures of the year, some of them very important and interesting, belonged to the class of emergency legislation, and presented the same general characteristics as the emergency legislation of 1915.

The fiscal legislation of the Canadian Parliament included a Business Profits War Tax Act which, according to Mr. Gisborne, is the first instance of the Dominion Parliament imposing a direct tax on private persons. The policy of the Dominion Parliament is to leave temperance legislation to the provinces, and it contented itself with aiding that legislation by prohibiting the transfer of intoxicants from one province to another. The provincial legislation of the year was copious, varied, and, especially in the western provinces, adventurous. The flowing tide in favour of strict temperance legislation was much in evidence. Ontario, which passed many important measures, included among them an exceptionally rigorous "prohibition" Act. Alberta affirmed the decision of an enormous

majority on a popular vote by prohibiting liquor traffic throughout the province. The principle of the referendum is gaining ground in Canada. Manitoba provided machinery for an "initiative" referendum. There was a general tendency to give women the vote, and to remove sex disqualification for office, but in British Columbia the grant of the suffrage to women was made subject to a referendum. What is Blue Sky legislation[1]? It seems, from a note on Saskatchewan legislation, to be used in the United States for indicating laws aimed at the protection of citizens against being swindled into the purchase of worthless concerns, and a Saskatchewan Act is described as falling within this category. There was, of course, much legislation arising out of war conditions, such as the provisions for giving votes to soldiers.

The review of Australian legislation includes part of the Commonwealth legislation for 1915, most, but not all, of which was consequential on the state of war. Thus there was an Act declaring enemy contracts void, there were two War Census Acts, a War Pension Act, and Income Tax Acts with graduated scales, besides War Loan Acts and other borrowing measures. Of the forty-one Acts passed by the Commonwealth of 1916 the greater number related to the war. They included the Military Service Referendum Act, which provided for the submission to a referendum of the following question :

> Are you in favour of the Government having, in this grave emergency, the same compulsory powers over citizens in regard to requiring their military service for the term of the war, outside the Commonwealth, as it now has in regard to military service within the Commonwealth ?

The Act disqualified from voting on the question persons born in foreign countries and interned persons. The answer of the majority on the question referred was in the negative.

The fiscal legislation of 1916 included Income Tax, Land Tax, Estates Duty, and Entertainments Tax Acts. There was a Daylight Saving Act. There was an Unlawful Associations Act aimed at the suppression of the Industrial Workers of the World, well known in the United States as the I.W.W. And, finally, there were some modest little Acts dealing with the interpretation of statutes and with statutory rules.

[1] See Review of Legislation, 1913, p. 159.

New South Wales, in spite of the war, found time in 1916 for much important domestic legislation. Among the war measures was a measure temporarily disfranchising naturalised British subjects of enemy origin, another providing for the sale or lease of land to returned soldiers, and, perhaps, a Liquor Referendum Act, which resulted in the earlier closing of licensed premises and a considerable reduction in bar takings. Among the enactments falling outside the category of war measures were an Act for the official valuation of land, an Eight Hours Act, an Act establishing a State Provident Fund built up by contributions from employers and employees for persons employed by the State on certain quasi-public bodies, an Act providing for the maintenance of testator's families and for the guardianship of infants, an Education Act designed to enforce more regular attendance at schools, a Forestry Act, a Tenants' Improvement Act, and a Workmen's Compensation Act practically copied from the English Act.

These are a few only among the many important legislative measures passed in Australia and New Zealand in the year under review. For the details of these measures, and for the provisions of other measures which we have been compelled to leave unnoticed, we must refer our readers to the pages of the Review, and we can here only express our gratitude for the care which our local contributors have bestowed on their laborious task.

The summary of the Ordinances of Fiji, the Western Pacific, and the Gilbert and Ellice Islands, must be passed over with a similar comment.

For a lucid account of South African legislation we are again deeply indebted to Mr. E. L. Matthews. The Railway Board Act of 1916 illustrates the difficulties of placing the administration of railways under Government control. The Act for the Removal or Modification of Restrictions on Immovable Property is of interest for lawyers rather than for legislators or for members or officials of an executive government, and its explanation involves a statement both of Roman-Dutch law and of the local customs of South Africa as to fidei-commissary bequests and the entail of landed property. The Union Parliament did some very useful work by consolidating and unifying several branches of the Statute Law, including the laws relating to patents, designs, trade-marks and copyright, to insolvency, to railways and harbours, and to lunatics. It established

a Federal University for South Africa, and two single college Universities at Stellenbosch and Cape Town. It passed much financial and special war legislation and grappled with the subject of miners' phthisis. The Ordinances of the Cape and of the Transvaal were of less importance and interest.

The Review contains, as usual, full reports of legislation largely, but by no means wholly, of an emergency character, in British India, and in other parts of the British Empire.

The disturbed state of Europe has prevented us from obtaining information about the course of legislation on the European continent, and, to our regret, we have been unable to supply for 1916 our usual summary of legislation in the United States.[1] Hence the Review is confined this year to the British Empire, but that supplies ample material for digestion.

[1] The account of American War Measures in our April number to some extent fills this gap.

BRITISH EMPIRE.

I. BRITISH ISLES.

1. UNITED KINGDOM.

[*Contributed by* D. H. PETTITT, ESQ.]

THE Parliamentary Enactments of the calendar year 1916 include seven Acts which received the royal assent late in the Session 5 & 6 Geo. V., which lasted from 1914 to early in 1916. The other Acts of the year belong to the Session 6 & 7 Geo. V.

In the following summaries these Acts are arranged in two classes—one dealing with ordinary legislation, and the other with war legislation. This classification is, necessarily, subject to a certain amount of overlapping, as some of the Acts relate to both war and general subjects; so the principle has been adopted of including under War Legislation all those statutory provisions of the year which are in terms expressed to be war measures, or which relate to matters military, or to financial provision for war purposes, or the production of war material, and to include all other statutes under the head of General Legislation.

General Legislation.

Anzac.—By the "Anzac" Restriction on Trade (Use of Word) Act (c. 51, U.K.) the use of the word "Anzac," or any word closely resembling that word, in connection with any trade or business is prohibited without the authority of a Secretary of State given at the request of the Government of the Commonwealth of Australia or the Dominion of New Zealand. The prohibition applies to the word where forming part of any trade mark, or the name of any company or society.

British North America.—A short Act for prolonging the duration of the Parliament of Canada until October 7, 1917, was passed on June 1, 1917 (c. 19). The British North America Act, 1867, and amending Acts, do not appear to confer such a power upon the Dominion Legislature.

Business Names.—A long existing want has been met by the Registration of Business Names Act (c. 38, U.K.). Before the passing of this Act, any person, of any name or antecedents, was at liberty to carry on business under any name, whether his own or not, and without in any way disclosing his identity. The present Act does not make the use of a trade name illegal, but prevents secrecy on the subject by requiring registration, not only of the business name and the general nature and principal place of business, but also of the true Christian name and surname, any former Christian name or surname, the nationality (including, where there has been a change, the nationality of origin), and the usual residence and other business occupation, if any, of the person or firm carrying on the business. Any change occurring in any of the registered particulars with respect to any firm or person must be duly registered; and the Registrar is given a discretionary control over the use of the word "British," or any other word which, in his opinion, is calculated to lead to the belief that the business is under British ownership or control.

Besides providing for penalties, the Act imposes a civil disability on any person or firm who is in default as to the required registration, by making nugatory the business contractual rights of the defaulter.[1]

Coal Mines.—The Police, Factories, etc. (Miscellaneous Provisions) Act (c. 31) relates, amongst other things, to the subject of coal-mines. It enables the Board for Mining Examinations, with the approval of the Secretary of State, to relax the qualifications as to practical experience in mining required from applicants for certificates of competency in the case of men who have served for not less than a year in His Majesty's forces for the purpose of the present war, and who before such service had had practical experience in mining.[2]

[1] This provision has recently been the subject of an interesting judicial decision in the case of *Daniel* v. *Rogers*, [1918] 1 K.B. 149; [1918] 2 K.B. 228.

[2] Other provisions of this miscellaneous Act will be found under the headings "Factories and Workshops" and "Police."

Criminal Law.—The Larceny Act (c. 50, E. & I.) continues the consolidation of the Criminal Law which had been begun in the Perjury Act of 1911 and the Forgery Act of 1913. It repeals either wholly or in part no fewer than sixteen statutes, and consolidates the law upon the subjects of larceny; embezzlement; robbery; burglary; receiving stolen goods; obtaining money, goods, or security by false pretences; demanding money with menaces; and other similar offences.

The Prevention of Corruption Act (c. 64, U.K.) imposes penal servitude, not exceeding seven nor less than three years, in case of conviction of an offence under the Prevention of Corruption Act, 1906, or the Public Bodies Corruption Act, 1889, where the matter or transaction in relation to which the offence is committed is a government contract, or a contract with a public body, or a sub-contract, or proposal for contract of a similar character. This penalty is without prejudice to any penalty under the earlier Acts. Where it is proved that any money, gift, or consideration has been paid or received, the transaction is regarded as corrupt, unless the contrary is proved. Proceedings may be taken at any time within six months after the first discovery of the offence by the prosecutor.

Education.—The Elementary Education (Fee Grant) Act (c. 35, E.) removes the limit of fifteen years as the age for payment of fee grant under the Elementary Education (Fee Grant) Act, 1891.

The Education (Provision of Meals) (Ireland) Act (c. 10, I.) enlarges from one half-penny to one penny in the pound the amount which may be expended by a Local Authority for the provision of food for any of the children attending a National School.

Factories and Workshops.—Part II. of the Police, Factories, etc. (Miscellaneous Provisions) Act (c. 31) empowers the Secretary of State to make special provisions for the welfare of the workers in any factory or workshop (not including domestic factories or workshops) in relation to arrangements for meals; the supply of drinking water; the supply of protective clothing; ambulance and first aid arrangements; the supply and use of seats in work-rooms: facilities for washing; accommodation for clothing; arrangements for supervision of workers; and other matters which the Secretary of State may include in any special Order made under s. 126 of the Factory and Workshops Act, 1901. Any such Order may, amongst other things, provide for the workers concerned being associated in the

management of the arrangements in any case where a proportion of the cost is contributed by them, but such contribution may only be levied where the additional or special benefits are not such as, in the opinion of the Secretary of State, could reasonably be required to be provided by the employer alone, and the assent of at least two-thirds of the workers is necessary to enable an Order involving such contribution to be made. Except as provided in any such Order the occupier of any factory or workshop may not make any deduction from the pay of any workman.

Under the Act it is no longer the duty of certifying surgeons to investigate the nature and cause of death or injury caused by accidents. But the duties of the certifying surgeon as regards cases of disease remain unaffected. So also does his duty to investigate and report upon cases of injury caused by exposure to gas, fumes, or other noxious substances, or to any other special cause specified in instructions of the Secretary of State as requiring investigation or which the Inspector of the district, in pursuance of any general or special instructions of the Secretary of State, may refer to the certifying surgeon for the purpose.[1]

Foreign Affairs. — The Anglo-Portuguese Commercial Treaty Act (c. 39), after a preamble reciting that the Treaty of Commerce and Navigation set out in the Schedule to the Anglo-Portuguese Commercial Treaty Act of 1914 has not been ratified, and that, in order to give effect to the intention of this Treaty, it is expedient further to limit the use of the description "port" as applied to wine, enacts that the use of the word "port" shall be deemed to be a false trade description within the meaning of the Merchandise Marks Act, 1887, unless the wine on importation was accompanied by a certificate by the competent Portuguese Authorities that it was a wine to which, by the law of Portugal, the description "port" may be applied. There is a proviso in favour of wine intended solely for exportation from the United Kingdom.

Gas.—The Gas (Standard of Calorific Power) Act (c. 25, U.K.) authorises the substitution, under Government sanction, and after due notice, of a standard of calorific power for a prescribed illuminating power.

Imperial Institute.—The Imperial Institute (Management) Act

[1] Other provisions of this Act will be found under the headings "Coal Mines" and "Police."

(c. 8, U.K.) transfers the management of the Imperial Institute from the Board of Trade, to which it was committed by the Imperial Institute (Transfer) Act, 1902, to the Secretary of State for the Colonies. It abolishes the Advisory Committee created by s. 8 of the Act of 1902, and substitutes for it an Executive Council consisting of twenty-five members, of whom the Secretary of State for the Colonies appoints fourteen, the Board of Trade and the Secretary of State for India two each, the remaining seven being appointed one each by the Board of Agriculture and the respective Governments of India, Canada, Australia, South Africa, New Zealand, and Newfoundland.

India.—The Government of India (Amendment) Act (c. 37) makes in the consolidating Government of India Act, 1915, sundry amendments which were considered in 1915 to go beyond the strict practice of consolidation. The amending Act contains a "printing clause," which authorises the reprinting of the principal Act with any amendments made by this or any subsequent Act Precedents for such provisions are to be found in the Army Act and some other Acts.

The amending Act also contains provisions for removing doubts as to the validity of certain Orders in Council under the Foreign Jurisdiction Act and for the transfer of India Stock by deed.

Ireland.—During the year 1916 disturbances took place in Ireland, principally in Dublin, which resulted in the destruction of buildings, official documents, and records and documents of title to property and legal procedure, and two Acts were passed during the year 1916 for remedying the state of things thus brought about. The Law and Procedure (Emergency Provisions) (Ireland) Act (c. 46) eliminates the interval of time between April 24 and May 8, 1916, with regard to proceedings in any Court in Ireland; empowers the Court to extend time for taking any step prevented by the disturbances; allows the use of authenticated copies where original documents have been lost or destroyed in the course of the disturbances; and extends the process of perpetuating testimony to any muniment of title or other document lost or destroyed, or damaged, during the disturbances.

The Dublin Reconstruction (Emergency Provisions) Act (c. 66) empowers the Corporation of Dublin to purchase land under the Public Health (Ireland) Acts 1878 to 1907, for the purpose of widening

or improving the streets in Dublin in connection with the reconstruction of buildings, and to advance money for building purposes. The Act contains provisions for settling differences with building owners, and for safeguarding the rights of householders and leaseholders.

The Constabulary and Police (Ireland) Act, 1916 (c. 59), increases the pay of District Inspectors and Constables of the Royal Irish Constabulary, and of Constables of the Dublin Metropolitan Police.

The Time (Ireland) Act, 1916 (c. 45), makes Greenwich time the standard time for Ireland, and thus secures uniformity throughout the United Kingdom. The Act applies both during the periods when the Summer Time Act, 1916, is in force and at other times.

Isle of Man.—The Isle of Man (Customs) Act, 1916 (c. 27, E.), is a Revenue Act increasing the duties on various classes of goods removed or imported into the island.

Local Authorities.—The Public Authorities and Bodies (Loans) Act, 1916 (c. 69), confers and increases, during the war and six months afterwards, the borrowing powers of Councils of Counties, Municipal Boroughs, and other public authorities and bodies.

Lunacy.—The Police Factories, etc. (Miscellaneous Provisions) Act, 1916 (c. 31, U.K.) contains a section (11) providing that s. 65 of the Mental Deficiency Act, 1913, which transfers to the Board of Control the powers of Commissoners of Lunacy under or in pursuance of the Lunacy Acts, 1890 to 1911, is to be considered as having included in the transfer the powers of the Commissioners under any other enactment.

Marriage.—Two Acts relating to this subject were passed during the Session of 1916. The Marriage (Scotland) Act, 1916 (c. 7, S.) contains provisions some of which are permanent and some limited to the duration of the war. The permanent provisions require the parties to a joint application for a warrant to register an irregular marriage under the Marriage (Scotland) Act, 1856, before presenting the warrant to the sheriff, to procure from the registrar of the parish or district a schedule of particulars, and the sheriff's clerk must within three days from the granting of the warrant transmit the application, warrant, and schedule to the Local Registrar, who is to enter the marriage forthwith in the Register of Marriages, as provided in s. 2 of the Act of 1856. After the commencement of the Act no person is to be convicted of having contracted a clandestine or irregular marriage.

Under the Marriage of British Subjects (Facilities) Amendment Act, 1916 (c. 21, U.K.), s. 1 of the Marriage of British Subjects (Facilities) Act, 1915, may be applied by Order in Council to parts of His Majesty's dominions outside the United Kingdom, where by the local law notice of marriage is not required on the part of the party to the marriage who is resident in the United Kingdom.

Merchant Shipping.—The Merchant Shipping (Salvage) Act, 1916 (c. 41, U.K.) enables the Admiralty to claim salvage on behalf of His Majesty for salvage services rendered by any ship belonging to His Majesty, if that ship is specially equipped with salvage plant, or is a tug.

Ministers.—The Re-election of Ministers Act, 1916 (c. 22, U.K.), includes the office of Minister of Munitions in the provisions of the Representation of the People Act which enable a Minister who has been elected since acceptance of office to accept another office without vacating his seat. It also provides that where, by virtue of the Re-election of Ministers Act, 1915, a member did not vacate his seat by reason of acceptance of office, he is to be treated as if he had been returned since his acceptance of the office.

The Re-election of Ministers (No. 2) Act (c. 56, U.K.) made provision for the new offices created after the change of Ministry in December 1916, and provided that a Member of the House of Commons should not vacate his seat by reason only of his acceptance of office at any time during the months of December 1916 and January 1917; and that his return as a Member of the House was to be treated as made since his acceptance of office.

The Ministry of Pensions Act, 1916 (c. 65, U.K.) established a Ministry of Pensions to which are transferred the powers and duties of the Admiralty as to pensions and grants to persons who have served as officers or men, and to their widows, children, and other dependants, and as to persons who have been employed in the nursing service of any of His Majesty's naval forces, other than service pensions, so far as such pensions and grants are payable out of moneys provided by Parliament, and not provided exclusively for the purpose of Greenwich Hospital. The powers and duties of the Commissioners of Chelsea Hospital (other than as regards in-pensions), and of the Army Council and the Secretary of State for War as to pensions and grants other than service pensions, are also transferred to the Ministry of Pensions. The person first appointed

Minister of Pensions was not, by reason of his appointment, to vacate his seat as a member of the House of Commons.

Other new ministries and departmental secretariats were created by the New Ministries and Secretaries Act, 1916 (c. 68, U.K.). The new offices include the Ministry of Labour, the Ministry of Food, the Ministry of Shipping, and the Air Board (now superseded by the Air Council). The Act, which is limited to the duration of the war and six months thereafter, suspends the statutory restrictions on the number of Under-Secretaries to the Secretaries of State, or the number of Secretaries of any Government Department who may sit and vote in the House of Commons. A Minister appointed under the Act, or a Secretary in a Ministry established under the Act, is capable of being a Member of the House of Commons ; but only one Secretary in each Ministry is to be a member of that House at one time. A Minister under the Act may serve in Parliament if returned since his acceptance of office, and may accept other offices without vacating his seat in the House of Commons.

Prize.—The Naval Prize (Procedure) Act, 1916 (c. 2, U.K.) repeals as from August 4, 1914, so much of s. 51 of the Naval Prize Act, 1864, as provides that actions and proceedings against any person in His Majesty's Naval service or in the employment of the Admiralty shall not be brought or instituted elsewhere than in the United Kingdom. It also contains provisions extending the powers to transfer proceedings from one Prize Court to another.

Pacific Islands.—A short declaratory Act, the Pacific Islands Regulations (Validation) Act, 1916 (c. 9,), consisting of a preamble and one operative section which is retrospective in its effect, removes doubts which had arisen as to the power of His Majesty's High Commissioner for the Western Pacific to make King's regulations for places which are British Settlements within the meaning of the British Settlements Act, 1887.

Parliament.—On January 27, 1916, the royal assent was given to the Parliament and Registration Act, 1916 (c. 100, U.K.). This was the first of the series of Acts prolonging the existence of the present Parliament. It substituted five years and eight months for five years in s. 7 of the Parliament Act, 1911 ; and provided that s. 2 of the Parliament Act, 1911, should, during the continuation of the present Parliament, have effect as if the session which ended bill in September 1914, and any subsequent session in which a

public bill might be passed by the House of Commons were successive sessions.[1]

The Parliamentary and Local Government Registers of Electors were to remain in force until Parliament made other provisions for the substitution of any special Registers, or otherwise directed; and no steps were meanwhile to be taken in connection with the preparation of a new Parliamentary or Local Government Register of Electors.

A second Act dealing with the same subject, the Parliament and Local Elections Act, 1916 (c. 44, U.K.), was passed on August 23, 1916. This Act further extended the duration of the present Parliament by substituting six years and three months for the five years and eight months provided for in the earlier Act. It also provided for the postponement of Statutory Elections of County and Borough Councillors, District Councillors, Guardians, Parish Councillors, and Members of School Boards in Scotland, where any such election would take place before June 1, 1917, or in Ireland before May 20, 1917. Where the term of office of a councillor, guardian, member or elective officer of a local or other body would have expired but for the provisions of the Elections and Registration Act, 1915, or the later Act, that person might resign his office without payment of any fine, notwithstanding s. 36 of the Municipal Corporations Act, 1882. The Act removed the restriction placed by the earlier Act of the year on the taking of steps for the preparation of registers.

Police.—The Police, Factories, etc. (Miscellaneous Provisions) Act (c. 31, E. and in part S. & I.) was both a general and a war measure. As a war measure it is dealt with under that heading. Among its provisions on other than war subjects it gave power to a Police Authority to make regulations with respect to places where, and the conditions under which, persons might be permitted in any street or public place within the police area to collect money or sell articles for the benefit of charitable or other purposes.[2]

Another section of the same Act made part payment operate as a

[1] S. 2 of the Parliament Act, 1911, is the section which enables a bill to be presented for the royal assent after having passed the House of Commons for three successive sessions and having failed to pass the House of Lords.

[2] Regulations have been made on this subject, but as they bear date January 2, 1917, they do not come within this summary, which is limited to the legislation of the calendar year 1916.

proportionate reduction of a term of imprisonment in all cases where imprisonment had been ordered for non-payment of money.[1]

Land Settlement of Discharged Fighting Men.—The Sailors and Soldiers (Gifts for Land Settlement) Act, 1916 (c. 60, U.K.) gave power to the Board of Agriculture and Fisheries, or the Council of any County or County Borough, to accept and administer any gift to be applied wholly or mainly for the settlement of ex-soldiers and sailors on the land. Such gifts are excepted from the Mortmain and Charitable Uses Act, 1888.

Court of Session.—The Court of Sessions (Extracts) Act (c. 49 S.) regulates the form of warrant for execution in Extracts of Court of Sessions decrees.

Telegraph.—The Telegraph (Construction) Act (c. 40 U.K.) provides for the case of an owner or occupier of land or buildings refusing to give consent to the placing of a telegraph line under, in, upon, over, along or across the land or building, by treating it as a difference between the Postmaster-General and the owner, and applying ss. 3, 4 and 5 of the Telegraph Act, 1878.

War Emergency Legislation.

As already has been pointed out, the calendar year 1916 included part of a session of Parliament which commenced in 1914, and terminated early in 1916, and another session which comprised by far the greater part of the calendar year. The following Acts deal with the war emergency legislation of the period under review, namely the calendar year 1916.

Excess Profits.—Excess Profits Duty Regulations were made by the Commissioners of Inland Revenue on January 6, 1916, under s. 45 (7) of the Finance (No. 2) Act 1915. They related to assessment returns by tax-payers, appeals, and other matters of detail. These regulations are based upon the Acts passed before 1916, and were made before the Finance measures of the year had been brought forward in Parliament.

Munitions of War.—On January 27, 1916, an Act[2] was passed amending the Munitions of War Act, 1915. The Act empowered the

[1] Other provisions of this Act, which is very miscellaneous in its nature, will be found under the headings of "Coal Mines" and "Factories and Workshops."

[2] The Munitions of War (Amendment) Act, 1916 (5 & 6 Geo. V. c. 99).

Minister of Munitions to declare any establishment belonging to or under the control of the Government for munition work to be a controlled establishment, and thereupon the provisions of the Munitions of War Act, 1915, and of the present Act relating to controlled establishments, were to apply subject to any necessary modifications. It also amended the Act of 1915 as regards the provisions for settlement of labour differences; the voluntary undertaking of a workman to work for the Minister of Munitions; the prohibition of the employment of persons who have left work in Munition Factories, and in some other particulars; and it empowered the Minister of Munitions to make rules [1] for carrying out s. 7 of the principal Act, which related to the grant of a certificate by an employer to a workman who had left the employment with the consent of his employer. It dealt with rates of wages of women employed in munition work, and of semi-skilled and unskilled labour in controlled establishments, the establishment of special Arbitration Tribunals, and other matters bearing upon work in Munition Factories. Under s. 15 if non-union labour were introduced during the war into a controlled establishment, where previously union labour was exclusively employed, the introduction of non-union labour was to be only for the period of the war.

Late in the year (December 22, 1916) an Act [2] was passed by which, in cases where the Government had assumed any of the liabilities of persons manufacturing or dealing with munitions to which the Act applies, contributions for damage or loss attributable to explosion were to be paid by the persons whose liability is assumed. The Minister of Munitions was to appoint an Advisory Committee consisting wholly or in part of persons having special knowledge of insurance for the purpose of advising him with respect to contributions, and might delegate to that Committee the fixing of the amount of the contributions.

Contraband of War.—A royal Proclamation was issued on January 27, 1916, making additions to, and amendments in, the list of articles to be treated as Contraband of War.

Naval Forces.—A short Act [3] empowered the Admiralty to direct

[1] Orders have been made under the power here conferred, but they belong to the year 1917.

[2] Munitions (Liability for Explosions) Act, 1917 (c. 61).

[3] The Naval Forces (Service on Shore) Act, 1916.

by Order that all or any of the officers and men borne on the books of any of His Majesty's ships should, whilst serving on shore, be subject to military law under the Army Act. The Act was to have effect during the war and for six months afterwards.

Customs.—The Customs (War Powers) Act, 1916 (5 & 6 Geo. V. c. 102), passed on January 27, 1916, provided that where goods had been seized on the ground that the Commissioners of Customs and Excise had reason to suspect that the country of origin was an enemy country, or the goods were being imported in contravention of the law relating to trading with the enemy, notice [1] of the seizure might, if the owner had no address in the United Kingdom, be given by publication in the *Gazette*. The Act extended the provisions of the Acts on the same subject which were passed in 1915 as to the ultimate destination of exported goods where a declaration as to the person or country of ultimate destination was made in a Shipping Document lodged after shipment. The power given by the first of the two Acts of 1915 to the Commissioners of Customs and Excise to seize imported goods of suspected enemy origin was extended to all goods which at the commencement of the 1916 Act were under detention as being of suspected enemy origin.

Military Service.—An Act [2] passed January 27, 1916, makes the Army Council, and any general officer whom the Army Council might appoint for the purpose, a superior military authority within the meaning of the Army (Suspension of Sentences) Act, 1915, which provided that where a soldier who is employed on active service beyond the seas during the present war, was sentenced to penal servitude or imprisonment, the confirming authority, when confirming the sentence, might direct that the soldier be not committed to prison until the orders of a superior military authority had been obtained.

On the same date [3] the royal assent was given to the Military Service Act, 1916.[4] This Act is of constitutional, as well as of military, importance on account of the principle involved. It provided that every male British subject who, on August 15, 1915, was ordinarily resident in Great Britain, and had attained eighteen

[1] The notice referred to is that required by the Customs (Consolidation) Act, 1876, s. 207.

[2] The Army (Suspension of Sentences) Amendment Act, 1916 (5 & 6 Geo. V. c. 103).

[3] January 27, 1917.

[4] 5 & 6 Geo. V. c. 104

and not attained forty-one years of age, and was unmarried or a widower, without any child dependent upon him on November 2, 1915, should, with certain exceptions specified in the Act, or unless he attained forty-one years of age before the appointed date,[1] be deemed to have been duly enlisted in His Majesty's regular forces for general service with the colours, or in the reserve, for the period of the war, and to have been forthwith transferred to the reserve. The Admiralty is to have the first call upon men preferring naval service. There are specified exceptions to the application of the Act.

The exceptions, which are set out in a Schedule to the Act, include men ordinarily resident in His Majesty's dominions abroad, or resident in Great Britain for the purpose only of their education, or for some other special purpose; members of His Majesty's Regular or Reserve Forces; men serving in the Navy or Royal Marines; men in holy orders, or regular ministers of any religious denomination; men discharged from the Navy and the Army; men who hold a certificate of exemption (other than a certificate of exemption from combatant service only), or who have offered themselves for enlistment and been rejected since August 14, 1915.

The Act established local tribunals for the purpose of hearing applications for exemption, and authorised the granting of certificates of exemption on the grounds of expediency in the national interest; or of serious hardship; or of ill-health; or of conscientious objection. Certificates of exemption might also be granted by Government Departments, and any certificate might be absolute, conditional, or temporary, but might not be conditional upon undertaking or following any particular employment. In other words, the Act does not authorise "industrial conscription."

Trading with the Enemy.—Several further Acts bearing upon this subject were passed during the year 1916. The first in point of date was the Trading with the Enemy (Amendment) Act, 1916,[2] which received the royal assent on January 27, 1916. It empowered the Board of Trade to prohibit (conditionally or unconditionally) the carrying on of, or to require the winding up of, any business carried on in the United Kingdom by any person, firm, or company

[1] Twenty-one days after the day on which the Act came into operation. The commencement of the Act is directed to be by proclamation, not being more than fourteen days after its passing.

[2] 5 & 6 Geo. V. c. 105.

where, by reason of enemy nationality, or enemy association, the business was wholly or mainly for the benefit of, or under the control of, enemy subjects. A Controller might be appointed for the purpose of the Act, and provision was made with regard to distribution of assets in cases where any business had been wound up, and as to the assets in enemy territory. It requires enemy subjects to make returns as to property.

The Registrar of Joint Stock Companies was given the power to refuse an application for registration of a company where it appears to him that any subscriber of the Memorandum of Association, or any proposed Director of the Company, is an enemy subject, and the sanction of the Board of Trade was made necessary for any allotment or transfer of any share, stock, or debenture issued by a company made after the passing of the Act to or for the benefit of any enemy subject.

An Order in Council and a royal proclamation of May 23, 1916, ordering certain exceptions and adaptations in the Trading with the Enemy Acts, 1914 to 1916, and the Customs (War Powers) Act, 1915 and 1916, in their application to certain specified persons, or bodies of persons.

The trading with the Enemy (Copyright) Act, 1916,[1] passed on August 10, for the purpose of removing doubts as to the existence of copyright in works first published or made in an enemy country during the present war, the copyright wherein would, had a state of war not existed, have vested in any person as the first owner thereof by virtue of the application to an enemy country of any Order in Council made under the Copyright Act, 1911. The Act vested such copyright in the Public Trustee.

Aliens.—An Order in Council was made on January 27, 1916, which, as from February 14, 1916, extended the requirements of the Aliens Restriction (Consolidation) Order, 1914 (relating to the restriction of aliens residing in prohibited areas), to aliens wherever resident. A saving proviso enabled the Secretary of State to exclude any area so far as regards alien friends, and the restriction was not to apply to Belgian refugees. The Order went on to provide other restrictions on aliens in respect of prohibited areas, and varied the duties previously imposed upon hotel-keepers with regard to the restriction of persons staying in the premises.

[1] 6 & 7 Geo. V. c. 32, U.K.

A further Statutory Order, the Aliens Restriction (Consolidation) Order, 1916, was issued on November 6, 1916. This Order, as its title implies, was a consolidating measure.

Restrictions of Exports.—An order in Council was made on January 28, 1916, under the Customs (Exportation Prohibition) Acts approving a recommendation of the Board of Trade for the prohibition of the exportation to all destinations of cotton rags, linen rags, and waste paper, and for the prohibition of the exportation to all foreign countries in Europe and on the Mediterranean and Black Seas, other than France, Russia (except through Baltic ports), Italy, Spain, and Portugal of canes and sticks, unmounted, whether for basket-making or not; cordage and twine of Manila hemp; Europhen [1]; files; pocket-lamp cases, and cases fitted with bulbs not containing batteries; rum, and imitation rum.

Increase of Rent and Mortgage Interest.—On January 29, 1916, Rules were issued under the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915. They dealt with matters of procedure with regard to any question arising for determination under the Act.

Defence of the Realm.—A set of Regulations, principally of a consolidating character, were issued under the Defence of the Realm Act on February 15, 1916. Some of the provisions were new, as those by which the Admiralty, or Army Council, or Minister of Munitions might take possession of unoccupied premises for the purpose of housing workmen employed in war work; or might take possession of war material and any stores and articles required for war material; or might exempt any factory from the Factory and Workshop Act, 1901, where national interests so required; or requisition the output of factories manufacturing arms, munitions, etc. Other powers of a similar character were conferred by the Regulations.

Fresh powers were conferred for placing restrictions upon persons of hostile origin or association. The special permission of the Secretary of State or a passport was required for persons entering or leaving the United Kingdom. Communication with spies was prohibited, and restriction was placed on the publication of inventions or designs. Photographing, sketching, etc., Naval and Military Works, or the user or possession, or non-disclosure of any key to cypher or code, were brought under regulation together with other matters of importance to the public safety.

[1] A substitute for iodoform.

Munitions; Liability for Explosions.—An Act which was passed on February 22, 1917, the Munitions (War Liabilities for Explosions) Act, 1916,[1] related to contributions by persons carrying on munition works in respect of relief from liability for damage caused by explosion.

Finance.—The Revenue part of financial legislation consisted of several Acts, the earliest of which was the Finance (New Duties) Act, 1916,[2] which was passed on April 19, 1916. This Act imposed duties for admission to entertainments, according to a graduated scale based upon the price of admission, and the proprietor of the entertainment is responsible for its collection. Charitable and educational entertainments are exempted from its provisions. It also imposed duties upon matches, table waters, cider, and perry.

Regulations under the Act were made on August 15, 1916, by the Commissioners of Customs and Excise with respect to the manufacture and importation of matches, and a further set of regulations by the same authority was made on November 16, 1916, for carrying into effect the provisions of the Act imposing the entertainment duties.

Army Annual Act.—The Army Annual Act, 1916,[3] was passed on April 19, 1916. It continued the Army Act in force for a specified period and fixed a maximum price for accommodation provided for soldiers.

Trustees.—By the War Risks (Insurance by Trustees) Act, 1916,[4] which was passed on April 19, 1916, the power of a trustee to insure under s. 18 of the Trustee Act, 1893, was made to include a power to insure against war risks, especially loss attributable to hostile aircraft or bombardment, up to full value of the building or property insured.

Marriage.—Most of the provisions of the Marriage (Scotland) Act, 1916,[5] were of general application and have been noted in that part of the summary which deals with general legislation. The Act also contained a war provision to the effect that where one of the parties to an intended marriage in Scotland was serving in any of the naval or military forces of the Crown, notice of an intended marriage might be given to the registrar of the parish or district in which the female party should have resided for fifteen days in like manner as if both parties had resided for the same period in the same parish or district. The provision was limited to the duration of the war.

[1] 6 & 7 Geo. V. c. 61.
[2] 6 Geo. V. c. 11, U.K.
[3] 6 Geo. V. c. 5.
[4] 6 Geo. V. c. 5 (E. & I.).
[5] 6 Geo. V. c. 7 (S.). Passed April 19, 1916

Military Service.—A second Act[1] dealing with this subject was passed on May 25, 1916. It extended the earlier Act of the year by bringing into its operation men who attain the age of eighteen years as time goes on, but with the proviso that steps should be taken to prevent, as far as possible, the sending of men to serve abroad before they attain the age of nineteen. It removed the exemption which the earlier Act contained as regards men discharged from naval or military service of the Crown on the termination of their period of service, and provided for medical re-examination of men who had been rejected.

Extensive variations were made on the subject of certificates of exemption. Special committees are established under the Act for dealing with claims for exemption made by duly qualified medical practitioners. Nothing in the Act is to operate so as to render liable to military service any person who has at any time since the beginning of the war been a prisoner of war.

Workmen's Compensation; Industrial Diseases.—An Order of the Secretary of State dated May 6, 1916, made s. 8 of the Workmen's Compensation Act, 1906 (which relates to Industrial Diseases), include certain specified diseases or injuries contracted in any process in the manufacture or use of nitro- or amido-derivative of benzene, or any of its homologues.

Restriction of Exports.—A Royal Proclamation dated May 10, 1916, was made under s. 8 of the Customs and Inland Revenue Act, 1879, and s. 1 of the Exportation of Arms Act, 1900, and s. 1 of the Customs (Exportation Prohibition) Act, 1914, prohibiting the exportation from the United Kingdom of certain articles to all destinations; and certain amendments and additions having been made, a further Order in Council was made on October 23, 1916, on the recommendation of the Board of Trade, under s. 2 of the Customs (Exportation Prohibition) Act, 1914, further amending the Proclamation of May 10, 1916, and removing the prohibition from the exportation of various articles enumerated in the Order.[2]

Public Health.—The Local Government Board, by an Order[3] dated May 13, 1916, made an Order requiring medical officers of health to

[1] Military Service Act, 1916 (Session 2), 6 & 7 Geo. V. c. 15.

[2] Several subsequent Orders under the same power have now been made, but they belong to the year 1917. Another Order as to the pre-entry of export or coastwise goods and ships stores is dated January 26, 1917.

[3] The Public Health (Tuberculosis) Regulation, 1916.

send to the Army Council information as to persons suffering from tuberculosis. A further order by the same Authority was made on July 12, 1916, relating to the subject of venereal diseases.[1]

Local Government.—The Local Government (Emergency Provisions) Act, 1916,[2] enabled any local authority to grant leave of absence to any officer or servant for services in His Majesty's forces for the purposes of the war. Whilst the service lasts payment within defined limits might be made by the local authority to any person so serving or his wife or other dependants.

Courts Emergency Powers.—Two amending Acts on this subject appear among the statutes for 1916. The first of these two Acts [3] received the royal assent on May 17, 1916, and extended to officers and men of His Majesty's forces with regard to any transaction, whether before or after the commencement of the war, the protection which the Act of 1914 gave to other persons in respect of obligations contracted before the commencement of the war. Power was also given to County Courts to determine leases of members of His Majesty's forces.

The second of the two Acts, the Courts (Emergency Powers) (No. 2) Act, 1916,[4] became law on June 1, 1916. It contained amendments of the Act of 1914 in matters relating to the exercise of mortgagees' powers. It also enabled the Court to stay proceedings upon any petition for the winding-up of any company, and conferred upon the County Court discretionary power for the removal of restrictions imposed by the Increase of Rents and Mortgage Interest (War Restrictions) Act, 1915.

The Court might suspend the period required for the purpose of obtaining a prescriptive right to light under the Prescription Act, 1832, for any period between May 25, 1916, and six months after the termination of the war.

The question as to how far statutes of limitations should be modified in cases in which the rights of parties are more or less in abeyance as the result of emergency legislation may need consideration as the Courts appear to possess very little discretionary power in such cases. This is instanced in the case of *re Benzon*,

[1] The Public Health (Venereal Diseases) Regulations, 1916.
[2] 6 Geo. V. c. 12, U.K. May 17, 1916.
[3] 6 & 7 Geo. V. c. 13, U.K.
[4] 6 & 7 Geo. V. c. 18, E. & I. (in part S.).

Bower and Chetwynd,[1] in which Channel J., in delivering the judgment of the Court of Appeal, said that it is a "well-established rule that if the Statute [of Limitation] once begins to run, it continues to run, whatever happens." He referred to a decision of Lord Chelmsford in *Seagrum* v. *Knight*[2] as forming the only exception, and said that it was a peculiar case on very special facts; and, as a strong instance of the general rule, the learned Judge cited the case of *Coply* v. *Dorkminoque*,[3] decided in 1676, in which after time had begun to run the Courts were closed owing to the rebellion and yet no action could be brought, the statutory period of limitation having run out.

Summer Time.—The Summer Time Act, 1916,[4] was passed on May 17, 1916, altering the time of day to one hour in advance of Greenwich mean time, during the summer months of the year. The Act contained power for its application during the war in future years by Order in Council.

Naval Discipline.—On June 1, 1916, was passed the Naval Discipline (Delegation of Powers) Act, 1916,[5] by which, during the war, the Commander-in-Chief of the Grand Fleet, when so authorised by the Admiralty, might delegate to Vice-Admirals powers as to Courts Martial or Disciplinary Courts.

Military Service.—An Order in Council of June 1, 1916,[6] rescinded previous Orders made on the same subject and regulated the constitution of local tribunals, procedure, applications for the withdrawal or variation of certificates of exemption from military service and other kindred matters. A circular of the Local Government Board addressed to Town Councils, Metropolitan Borough Councils, and Urban Rural District Councils, was issued to explain the duties of local tribunals.

Finance.—The principal Finance Act of the year received the royal assent on July 19, 1916.[7] It related to duties upon coffee, chicory, coffee substitutes, sugar, table waters, cider, and perry. Some of these duties were new, and others are increases on duties which already existed. The duty on herb beer was reduced. The Act continued the income tax at 5s. in the pound, and made variations

[1] 1914, 2 Ch. 68.
[2] L.R. 2 Ch. 628.
[3] 2 Lev. 166.
[4] 6 & 7 Geo. V. c. 14, U.K.
[5] 6 & 7 Geo. V. c. 17.
[6] Military Service Regulations (Amendment) Order, 1916, (1916, No. 342).
[7] 6 & 7 Geo. V. c. 24, U.K.

in the scales of relief applicable to earned and unearned incomes respectively. A new class of relief was given by s. 32 of the Act to meet the case of a person whose income by a small amount passed a limit at which income tax or super-tax became payable at a higher rate, or the tax-payer ceased to be entitled to exemption or abatement, or only becomes entitled to a reduced exception or abatement. In such cases the amount of the income tax or super-tax was to be calculated as if the income had not exceeded the limit, and the tax charged must not exceed that amount plus the amount by which the total income did, in fact, exceed the limit.

The Excess Profits Duty was raised from 50 to 60 per cent. of the excess; and various matters were dealt with, such as computation of Excess Profits Duty in the case of the sale of ships, the adjustment of Excess Profits Duty, and Munitions Exchequer payments in the case of controlled establishments, the calculation of excess profits in cases of companies when fees were claimed by directors having a controlling interest in the company.

National Insurance.—The National Insurance (Part 2) (Munition Workers) Act,[1] which was passed on July 19, 1916, extends Unemployment Insurance (including the provisions as to contributions out of moneys provided by Parliament) to persons engaged on, or in connection with, munition works, and various employments ancillary thereto or having reference to war purposes. Power was given to the Board of Trade to extend the Act to other trades and employments.

Royal Marines.—The Royal Marines Act, 1916,[2] made the Royal Marines Act, 1847, as extended by the Royal Marines Act, 1914, relating to the prolongation of service, applicable to the duration of the war.

Motor Spirit Licences.—Regulations were made by the Board of Trade on July 31, 1916, under s. 15 of the Finance Act, 1916,[3] with regard to licences authorising the supply of motor spirit.

Output of Beer.—The Output of Beer (Restriction) Act, 1916,[4] was passed on August 3, 1916, and applied to the quarter which commenced on April 1, 1916, and to every subsequent quarter which commenced during the continuance of the war.

A certain maximum barrelage was laid down by the Act, and a

[1] 6 & 7 Geo. V. c. 20.
[2] 6 & 7 Geo. V. c. 23 July 19, 1916.
[3] 6 & 7 Geo. V. c. 24.
[4] 6 & 7 Geo. V. c. 26, U.K.

brewer might not brew more than the aggregate maximum barrelage during any given quarter.

Police.—Part 1 of the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916,[1] which was passed on August 3, 1916, allowed a constable to retain his pension[2] whilst serving in any of His Majesty's forces, or employed under the Admiralty or Army Council or the Ministry of Munitions, or on entering or re-entering the service of any police force. A police authority might pension persons injured whilst assisting the police.

Army (Courts of Enquiry).—The Army (Courts of Enquiry) Act, 1916,[3] which was limited to the duration of the war, laid down certain laws of procedure in Courts of Enquiry, enabling rules to be made for compelling persons not subject to military law to attend as witnesses to give evidence and produce documents before Courts of Enquiry; and where the Secretary of State certified that the evidence before the Court was likely to affect the character of persons not subject to military law, the rules might provide for the inclusion as members of Court of one or more persons nominated by the Secretary of State who are no officers.

Dardanelles and Gallipoli Campaign.—On August 17, 1916,[4] an Act was passed appointing Commissioners mentioned by name in the Act for the purpose of enquiring into the origin, inception, and conduct of operations of war in the Dardanelles and Gallipoli; including the supply of drafts, reinforcements, ammunition, and equipment of the troops and fleet, the provisions for the sick and wounded, and the responsibility of those departments of Government whose duty it had been to minister to the wants of the forces employed in that theatre of war.

Exchequer Bonds.—The Finance (Exchequer Bonds) Amendment Act, 1916,[5] was passed on August 17, 1916, and allowed Exchequer Bonds issued between August 2, 1916, and October 5, 1916, to be redeemed on October 5, 1921, although that date will be more than five years from the issue of the bonds. The Act is rendered necessary by a proviso in s. 58 of the Finance Act, 1916, which fixed a five years' limit for redemption.

[1] 6 & 7 Geo. V. c. 31, E. and (in part) S. & I.
[2] 53 & 54 Vict. c. 45.
[3] 6 & 7 Geo. V. c. 33, August 10, 1916.
[4] The Special Commissions (Dardanelles and Mesopotamia) Act, 1916.
[5] 6 & 7 Geo. V. c. 36.

Small Holdings.—The Small Holdings (Colonies) Act, 1916,[1] gave power during the continuance of the war and the period of twelve months thereafter to the Board of Agriculture and Fisheries, with the consent of the Treasury, to acquire land for the purpose of providing experimental Small Holding Colonies. The total area of land acquired might not at any time exceed 4,500 acres in England (excluding Monmouthshire), or 2,000 acres in Wales and Monmouthshire, or 6,000 acres in all; and in the selection of persons to be settled on the land preference was to be given to persons who had served in the Naval and Military Forces of the Crown in the present war. The Lands Clauses Acts were incorporated for the purpose of acquisition of land by agreement; but not for acquiring land otherwise than by agreement, nor for the sale of superfluous land. Compensation was provided in the case of a labourer who, having been regularly employed on any land so acquired by the Board, had thereby been deprived of his employment.

Powers were conferred upon the Board with a view to enabling them to promote co-operation in connection with Small Holding Colonies, and for the management and improvement of any land held by them for the purposes of the Act.

British Ships.—The British Ships (Transfer Restriction) Act, 1916,[2] applied to mortgages and transfers of mortgages of ships the provisions on the subject of transfers of ships contained in the British Ships (Transfer Restriction) Act, 1915, by which a transfer of a British ship or a share therein, to a person not qualified to own a British ship should not have any effect unless the transfer was approved by the Board of Trade, and the person making such a transfer without that approval is guilty of a misdemeanour.

War Charities.—The War Charities Act, 1916,[3] received the royal assent on August 23, 1916. The Act prohibited any appeal to the public for donations or subscriptions to a war charity, or the raising, or attempting to raise, money for any such charity by promoting any bazaar, etc., unless the charity was registered. As a condition of registration, compliance with certain conditions was required as a safeguard to the proper administration of moneys

[1] 6 & 7 Geo. V. c. 38, E. & S., August 23, 1916.
[2] 6 & 7 Geo. V. 2. 42, August 23, 1916.
[3] 6 & 7 Geo. V. c. 43, E. & S. and (if so extended by Order in Council) I.

received by the charity, and matters of procedure are dealt with. The Act did not apply to any collection at divine service in a place of worship, nor to a charity which might, under the regulations, be exempted by the Registration Authority.

Municipal Savings Bank.—The Municipal Savings Banks (War Loan Investment) Act, 1916,[1] is the last in order of time of the Acts which received the royal assent on August 23, 1916, just previous to the adjournment of Parliament. It enabled the Councils of Municipal Boroughs in England, and royal, parliamentary, and police burghs in Scotland, having a population of not less than 250,000, with the consent of the Treasury, to establish and maintain a savings bank and receive deposits, and to guarantee interest, and transact other incidental matters for the purpose of facilitating the investments of savings in securities issued for the purpose of the war.

On September 6, 1916, regulations were made under the Act by the Treasury with reference to the carrying out of the Act by the municipal authorities, and for the protection of depositors.

Defence of the Realm.—On November 21, 1916, the Board of Trade made an Order under the Defence of the Realm (Consolidation) Regulations, 1914, applying those regulations to potatoes, as being one of those articles of commerce as to which the Board was of opinion that information was required with a view to the exercise of the powers of the Board. The Order provided for a return to be made by potato-growers.

An Act was passed on December 22, 1916,[2] which enabled the Government, after the termination of the present war, to continue in possession of land which has been occupied for the purpose of the war for a period, not exceeding two years, subject to a possible extension of that period for not exceeding another three years on application to the Railway and Canal Commission. The Act also provided for the permanent acquisition of land by the Government by agreement or by compulsory method, subject to specified conditions.

Trading with the Enemy.—The Trading with the Enemy and Export of Prohibited Goods Act, 1916,[3] which was passed on

[1] 6 & 7 Geo. V. c. 47, U.K.

[2] The Defence of the Realm (Acquisition of Land) Act, 1916, 6 & 7 Geo. V. c. 63, U.K.

[3] 6 & 7 Geo. V. c. 52, U.K.

December 18, 1916, was a short Act providing (amongst other things) penalties for false statements with regard to any licence, authority, or approval for any transaction in connection with any Proclamation or Act relating to trading with the enemy, or for the purpose of obtaining a licence to export any goods the exportation of which without a licence was prohibited.

Output of Beer.—The Output of Beer (Restriction) Amendment Act, 1916,[1] which was passed on December 18, 1916, made an alteration in the provisions contained in the earlier Act of the year as to calculation of maximum barrelages.[2]

National Insurance.—On December 18, 1916, the National Insurance (Temporary Employment in Agriculture) Act, 1916,[3] was passed, giving power to exempt from the provisions of Part I. of the National Insurance Act, 1911, persons who are temporarily employed in agriculture by reason of the war.

Friendly Societies.—On December 18, 1916, the Friendly Societies Act, 1916,[4] was passed, by which, where the date at which a valuation of a Registered Society or Society under s. 28 of the Friendly Societies Act, 1896, is due to be made occurs during the war, or six months thereafter, the Chief Registrar, on the application of the Society, may, if he thinks fit, defer the valuation until such date as he may determine.

Local Government.—The Local Government (Emergency Provisions) (No. 2) Act, 1916,[5] which is limited to the duration of the war and afterwards for such period, not exceeding one year, as the Local Government Board may fix, makes provision for the calculation of the amount payable in respect of pauper lunatics.

Government War Obligations.—The Government War Obligations Act, 1916,[6] amends the Acts of similar title, 1914 and 1915, and provides for the fulfilment of war obligations of a monetary character incurred by the Government. It also gives trustees power to deposit securities with the Treasury or exchange such securities for Government securities.

Volunteers.—On December 22, 1916, the royal assent was given to the Volunteer Act, 1916,[7] which enables any member of a Volun-

[1] 6 & 7 Geo. V. c. 57, U.K.
[2] The principal Act is noted *ante* p. 48.
[3] 6 & 7 Geo. V c. 53, U.K.
[4] 6 & 7 Geo. V. c 54 U.K.
[5] 6 & 7 Geo. V. c. 55, U.K., passed December 18, 1916.
[6] 6 & 7 Geo. V. c. 70, U.K., passed December 22, 1916
[7] 6 & 7 Geo. V. c. 62

teer Corps to enter into an agreement, for a period not exceeding the duration of the war, for training and military duties in Great Britain, and to be dealt with, tried, and punished under the Army Act. Whilst engaged in any drill, exercise, or training, or while performing any military duty, such a volunteer shall be subject to military law. S. 7 of the Volunteer Act, 1863, which enables a volunteer to quit his corps on conditions, except when on active military service, shall not apply to a volunteer who has entered into an agreement under the present Act, so long as the agreement is in force, but subject to any provisions in the agreement itself.

2. ISLE OF MAN.

Acts passed—11.

Powers of Public Authorities.—An Act promulgated July 5, 1916, enables public authorities to suspend payments to sinking funds for a limited period.

Herring Fishery.—Another Act of the same date empowers the Government to brand barrels filled with cured herrings, and protects the marks placed on them.

Emergency Legislation.—A third Act enables legislation to be put into force without waiting for promulgation on Tynwald Hill.

Relief of Rates.—A fourth Act enables local authorities to raise loans on the security of the rates.

3. JERSEY.

[*Contributed by* E. T. NICOLLE, ESQ.]

Summer Time.—The States, May 13, 1916, passed an Act adopting Summer Time on the lines of the English Act of Parliament.

Merchant Shipping.—The States, on March 14, 1916, passed an Act (confirmed by Order in Council, dated May 10, 1916) adapting for local purposes the Merchant Shipping Act, 1894, and any Acts amending same, and bringing local legislation in line with that of the mother-country.

Wills.—The States, on February 29, 1916, passed an Act (confirmed by Order in Council, dated May 23, 1916) relating to the Wills of Personal Estate of Sailors and Soldiers on Active Service.

Wills of Personalty executed away from Jersey by officers and men of either service (whose domicile is Jersey) cannot be attacked on the ground that the formalities required by Jersey have not been observed.

Such a will may consist of any written document or of a verbal declaration made before two witnesses, provided the clear intention of the testator is indicated. A verbal declaration will only be valid where the estate is less than £50.

The testamentary capacity is fixed at sixteen years of age.

If an executor has not been named, the execution of the provisions of the will shall be undertaken by the Attorney-General of Jersey.

The law applies for the duration of this war only.

II. NORTH AMERICA.

1. THE DOMINION OF CANADA.

[*Contributed by* F. H. Gisborne, Esq., I.S.O., K.C.]

Acts passed—94; Public—29; Local and Personal—65.

The Session of 1916, which began on January 12 and closed on May 18, was rendered notable by the destruction by fire of the Parliament Buildings on Thursday evening, February 3, a fire of German incendiary origin, as most people firmly believe. The building was commenced in 1860, the corner-stone having been laid by King Edward VII, when Prince of Wales, and the internal fittings and the ceilings were of varnished Canadian white pine, which, though beautiful to the eye, were highly inflammable, and produced a dense smoke which rendered it impossible to fight the fire effectively. On Friday, February 4, Parliament continued its sittings in the Victoria Memorial Museum.

Financial.—The moneys voted by Parliament for the purposes of the war amounted to 250,000,000 dollars as against 50,000,000 in 1914 and 150,000,000 in 1915, and this amount, which to this country is enormous, was authorised without a dissenting voice or a single adverse criticism. Legislation was passed authorising a loan of 75,000,000 of dollars and such further amounts as may be necessary to meet the authorised war expenditure. Additional duties

were authorised—90 cents a barrel on apples, ½ a cent a gallon on petroleum oil, and 7½ per cent. upon crude petroleum imported to be refined. Under the preferential British tariff these duties are 60 cents, ⅓ of a cent, and 5 per cent.

Life Insurance.—Life insurance companies are obliged, under the Insurance Act of 1910, to deposit approved securities to a stipulated amount for the security of the Canadian policy-holders. An Act (c. 18) has now been passed requiring on or before December 31, 1916, such companies to hold and own securities of the Government of Canada to an amount not less than 50 per cent. of the increase in the net ledger assets during the year 1915, after deducting the amount of increase in the actuarial reserves in respect to policies in force outside Canada and the amount of increase in loans, liens, and premium obligations on policies in force in Canada; and on or before December 13, 1917, a similar amount on the same increases during the two years ending December 31, 1916. After February 1916 any deposits of securities must be made in bonds, debentures, or debenture stock of the Government of Canada. When this Act was being passed the Finance Minister said that nearly all the life insurance companies had, of their own free will, already made all the investments in Canadian Government securities that would be required under the proposed law. There was another short Act relating to insurance companies. Under the Insurance Act a company is allowed one year after obtaining its Act of Incorporation to organise and obtain a licence from the Minister of Finance, otherwise its Act of Incorporation lapses. This Act enables companies, by paying a small fee and making a formal application, to extend the time to the end of the next Session of Parliament. This is done in view of the stringency of business owing to the war.

An Act (c. 10) relating to banks allows them to lend money on the security of live stock, and the limit of time during which they might lend money to pay for seed grain on the security of the resulting crop was removed.

Business Profits.—The principal fiscal measure of the Session was the Business Profits War Tax Act (c. 11) which imposed a tax of 25 per cent. of the amount by which the profits of any business exceeded, in the case of incorporated companies, 7 per cent. and, in the case of other persons, 10 per cent. upon the capital employed

in such business, the tax to be collected for each of three years from December 31, 1914, and only to apply to such businesses as have a capital of not less than 50,000 dollars, or 20 per cent. or more of which has been used in the manufacture or dealings in munitions of war or in materials or supplies of any kind for war purposes. Life insurance companies, farming, stock raising and any business 90 per cent. or more of the capital of which is owned by a province or a municipality, are excepted. This tax is notable as the first instance of the Dominion Parliament imposing a direct tax upon any private individual. There have, heretofore, been one or two direct taxes upon corporations. A difficulty which had to be met by the Finance Minister was that, in the absence of any machinery for collecting direct taxes, he had to be careful not to so impose his tax as to make the cost of collecting it wasteful or excessive. This will explain the large amount fixed as the minimum capital liable to taxation. Each person liable to the tax is required to make a return to the Minister of Finance. The Minister fixes the assessment, which is subject to an appeal to a board of referees, and, finally, to the Exchequer Court of Canada.

Railways.—Under the Government Railways Small Claims Act (c. 17) claimants, instead of having to pursue their remedy by petition of right, can sue the General Manager of Government Railways if the claim does not exceed 500 dollars. This law hitherto only extended to the Intercolonial Railway. It is now extended to all Government Railways.

Statutes were passed authorising the acquisition by the Crown of two railways on the north shore of the St. Lawrence connecting with the National Transcontinental Railway at Quebec, and a railway crossing the Government railway at Villeroy, in the Province of Quebec, the price to be fixed by the Exchequer Court of Canada.

The agreement with the New Brunswick Government and the Saint John and Quebec Railway Company with respect to the railway of the company and its operation by the Canadian Government was varied.

An Act (c. 2) was also passed by Parliament, and at once assented to giving the Board of Railway Commissioners extraordinary powers of control where a railway company is unable to provide sufficient facilities for the movement of grain from the Western Provinces to the head of navigation on Lake Superior. The Board may require

the company to furnish all facilities in their power to carry grain to intermediate points, or points of interchange with other companies, or to terminal elevators, and to deliver the grain to another company, and may require such other company to carry the grain. Owing to the enormous harvest of 1916 piles of grain were lying at the stations without any protection, and it was absolutely necessary that this grain should be got into elevators or cars before the weather injured it. In particular, one of the railway companies had tapped a very rich agricultural country, and it could not handle the grain offered to it. An amendment to the Canada Grain Act is of a similar character—under it the Board of Grain Commissioners are given power to order railway cars to be supplied to facilitate the despatch of grain which is liable to become damp or injured.

Shipping Acts.—The definition of "coasting voyage" has been very much enlarged by c. 12. The requirements for a vessel engaged in coasting are less than for deep-sea voyages, and Canada is in competition with United States vessels and vessels of various colonies and countries where there are little or no requirements, and the present change is to help Canada to maintain her shipping engaged in business in the waters of North America and the islands adjacent.

Another amendment (c. 13) is to meet the conditions resulting from the wide use of internal combustion engines, electricity, and flash boilers, which do not require the highly trained engineers required for ordinary steam engines. Special certificates of qualification may be issued to engineers for operating internal combustion engines, etc. A change is also made in the law relating to pilots in the district of Quebec.

Liquor Traffic.—In Canada the Temperance movement, *i.e.* total abstinence, has been advancing in waves for many years past, the water remaining higher after each successive wave. The war wave now bids fair to go far beyond anything known before. As a result of the decisions of the Judicial Committee of the Privy Council, the respective legislative powers of the Dominion Parliament and the Provincial Legislatures have long been in doubt. The present contention of the Dominion authorities is that the control of the liquor traffic is primarily a matter for the Province, the condition of the several provinces and public opinion therein being different, and the Provincial Legislature being better able to meet local conditions and to be in touch with their public opinion, and

that the duty of the Dominion is merely to assist the Provinces in carrying out their law. "An Act in aid of Provincial Legislation prohibiting or restricting the sale or use of Intoxicating Liquors" (c. 19) has, therefore, been passed. It prohibits the sending of intoxicants from one Province to another with the intention that it shall be sold or used in the latter Province contrary to law, and the accused must prove that he had good reason for believing that any intoxicant sent from one Province to another would only be used in a lawful manner; and all packages containing intoxicants sent or shipped by any public conveyance where their sale is prohibited must be labelled to show what their contents are. Brewers or distillers who are convicted a third time of the first offence are to lose their excise licences and to be thereafter incapable of holding such a licence.

The Canada Temperance Act (c. 14), which is a local option Act, was also amended to prevent liquor being sent into districts in violation of the provincial law, and to enable a search warrant to be executed at night as well as in the day-time.

It may be added that several of the Provinces have passed very advanced legislation with respect to the liquor traffic, public opinion being very strongly in support of restricting the use of intoxicants during the war, and many think that the experiment will be so satisfactory that no change will be desired after the war is over.

Miscellaneous.—An amendment (c. 4) was passed to the Act forbidding the sale or manufacture of matches made with white phosphorus, in order to extend the time within which the existing stock of such matches may be sold.

An Act (c. 16) was passed to give the Exchequer Court of Canada jurisdiction to determine the value of property that the Crown proposes to sell, lease, or otherwise dispose of, and also every matter in which the Crown and any person interested have agreed that the Crown shall pay an amount to be determined by the Exchequer Court. Canada is rapidly developing, and, as the owner and operator of railways and other large public works, large transactions frequently occur in which a Minister or the Government must in fixing values depend upon its officers or upon experts; and it is a great relief from responsibility and from criticism to be able to refer the matter to determination by a Court.

An Act (c. 25) created a Court of Appeal for Saskatchewan.

The growth of the judiciary in this Province is somewhat striking. In 1907 it had five Superior Court judges and eight District Court judges (equivalent to County Court judges). There are now to be ten Superior Court judges and seventeen District Court judges.

An Act (c. 21) amending the Prisons and Reformatories Act is necessitated by the institution of the so-called "Industrial Farms," where intemperates and other minor offenders are taken care of and trained and assisted to become good citizens. These institutions are doing a splendid work wherever they have been tried and have been under capable management. The appointment of a Parole Board for Ontario by the Ontario Government is also authorised.

An Act (c. 27) authorising the payment of a bounty on zinc produced in Canada when zinc is selling at less than £36 19*s.* 3*d.* per long ton in London. No bounty is to be paid during the war or after July 31, 1917.

In addition to legislation, an address was passed by both Houses of Parliament asking for Imperial legislation to extend the life of the present Parliament until October 17, 1917. This request was, of course, due to the war. Under the British North America Act the life of the Canadian Parliament is five years. The extension will make the maximum life of the present Parliament six years. In the Provinces of Ontario and Quebec the maximum length of the life of the Legislatures was, under the British North America Act, 1867, four years, and in Manitoba the term was four years, under the Manitoba Act of 1870. Quebec and Manitoba have extended this to five years. Nova Scotia and New Brunswick have also extended the term from four to five years. In British Columbia, Saskatchewan, and Alberta it is five years, and in Prince Edward Island it is four years.

2. ALBERTA.[1]

Acts passed—43; Public, 27; Local and Personal, 16.

The fourth session of the third legislature of the Province was opened on February 24, 1916.

An Act to give effect to the decision of the people in carrying, by a majority of 20,786, a bill for the prohibition of the liquor traffic,

[1] Compiled from an official synopsis of the legislation prepared by the Deputy Attorney General.

and an Act to provide for women's suffrage were the two principal measures dealt with in the Speech from the Throne.

Of the fifty-three bills considered, thirty-two were introduced as Government bills relating to public matters, while twenty-one were what are called private bills, though some of them are of interest. The annual crop of amendments to Edmonton, Calgary, Lethbridge, Medicine Hat, and Red Deer city charters engaged the attention of the Private Bills Municipal Committee at lengthy sessions, and emphasised the necessity for a general Act setting out the powers to be given to cities, within which powers each corporation might well be left to local self-government. A bill incorporating a Graduate Nurses' Association was passed, after being re-drafted by a special committee. It provides for the registration with the Association of graduate nurses from general hospitals with two years' training, and of those who pass an examination to be arranged for by the Minister of Education, after which those registered may use the letters "R.N." (Registered Nurse) after their names. The Association will be officered by qualified nurses with power to pass regulations governing the conduct of the members. There will thus be provided a list of capable nurses, vouched for by the Association. The Act will not interfere in any way with nurses who do not care to avail themselves of the advantages offered by the Association.

Liquor Licensing.—Alberta was the first Province to pass a Direct Legislation Act, and the vote on the Liquor Act was the first reference to the electors under its provisions. This vote was taken on July 21, 1916, without a hitch, thus demonstrating that the Act was capable of practical application, while the immense vote polled and the large majority obtained for prohibition established the value of separating important questions from side issues and party influences, and submitting the same direct to the vote of the people. The Liquor Act (No. 1), as endorsed by the referendum, was the first Act passed by the Legislature.

Elections.—The Act (No. 2) providing for woman suffrage reads as follows:

> Notwithstanding any provisions therein contained, women shall be on an absolute equality with and have the same rights and privileges and be subject to the same penalties and disabilities as men in the following Acts, Ordinances and Charters:

Then follows a list of all the provincial Acts in which provision is made for the exercise of the franchise, and women are placed on an equality with men, both as regards the right to vote and eligibility for any office filled by election or by appointment in provincial and municipal affairs, from member of the Legislature to secretary-treasurer of a school district. Alberta leads in placing women citizens upon an absolute equality with the men.

By an Act (No. 5) to amend the Alberta Election Act, any elector, male or female, who is on polling day a member of the active military or naval forces of His Majesty, raised for service in the present war, and who is on such day quartered elsewhere within the Province than in the electoral division in which he or she is entitled to vote may, notwithstanding the provisions of the Alberta Election Act, vote in the electoral division in which such elector is quartered for a candidate in the electoral division in which he or she is an elector. The Lieutenant-Governor in Council is given power to arrange for the taking of the vote.

Drainage.—Act No. 3 makes provision for carrying out the larger drainage schemes by the formation of drainage districts. On the petition of two-thirds of the resident owners of lands which would be affected, the Minister of Public Works may send an engineer to make survey plans and estimates, stating as nearly as possible the cost to each parcel of land affected. If the Lieutenant-Governor in Council decides that the work shall be proceeded with the undertaking is advertised as a local improvement, the costs to be borne in proportion to the benefit derived. There is provision for an appeal from the engineer's assessment to a District Court Judge.

Special drainage district debentures may be issued for a term of years to meet the costs, and the levies to pay for same are to be collected through the municipalities interested. After construction each municipality is responsible for the maintenance of the portion of the system within its boundaries, but the cost of such maintenance is to be levied in similar manner as original cost. Penalties are provided for obstructing any public ditch or water-course.

War Legislation.—An Act (No. 4) for the Relief of Volunteers and Reservists provides that no action shall be brought or proceedings taken against any volunteer or reservist, or against the wife or any dependent member of his family, for the enforcement of any debt or of any mortgage or other security incurred before the passing

of the Act until one year after the close of the war or after the discharge of the volunteer or reservist, whichever shall first happen. This protection applies not only to the British volunteers and reservists, but also to any and all of the volunteers and reservists of Britain's allies. Provision is made to prevent the fraudulent disposal or waste of the property of volunteers during their absence.

Change of Name.—No. 6 makes provision for a change of name by application to the Provincial Secretary, upon complying with certain conditions and payment of the necessary fees.

Companies.—By an Act (No. 7) to Regulate the Sale of Shares, Bonds and other Securities of Companies, any company, corporation, syndicate, or association of persons incorporated or unincorporated or person desiring to sell or to advertise for sale stock, shares, bonds or other securities must first apply to the Board of Public Utility Commissioners for permission to do so. The Board is given full authority to examine into the affairs of the company or person, their methods of doing business and financial standing and, if satisfied, may issue a certificate to the company or person, reciting that such company or person is permitted to do business in the Province.

Companies must furnish, at least annually, returns giving a statement of their affairs, and if such statement shows that the company is bankrupt or is conducting its business in an unsafe manner or is risking the money invested by stockholders the Board may cancel the certificate to do business held by the company and revoke the licences held by agencies and give notice of the same in the *Alberta Gazette.*

This Act gives a certain protection to the public against the vendors of worthless stock, though the fact that the company has a certificate must not be taken by the people to mean that the purchase of the stock is recommended by the Board.

No. 15 gives companies organised in Alberta power to do business in other provinces on obtaining the consent of those provinces. The Act was rendered necessary by a decision of the Privy Council.

By the Corporations Taxation Act (No. 20) the annual tax payable by express companies is as follows:

(1) $45 on each branch in an incorporated town or city of less than five thousand inhabitants; (2) $160 in cities of over five

thousand inhabitants, except Edmonton and Calgary; and (3) $250 each for these two cities.

Joint stock companies with over $20,000 capital shall pay a tax of 20 cents on each $1,000 of their capital, the total tax not to exceed $500.

The Alberta Farmers' Co-Operative Elevator Company is specially exempted.

Every company supplying gas to more than one city shall pay a tax of 20 cents on each $1,000 of its authorised capital.

Fire Prevention.—No. 8 provides for fire inspection. The Chief of the Fire Department of every city, town, and village in which a fire department is established, the mayor of any town, the overseer of any village where no department exists, and the secretary-treasurer of every rural municipality and local improvement district are made local assistants to the Fire Commissioner and subject to his direction and authority. Each local assistant is to be paid 50 cents for every fire, the damage from which exceeds $100, reported by him to the Fire Commissioner, and, in case of the secretary-treasurer of rural municipalities and local improvement districts, an additional mileage rate of 10 cents per mile travelled to and from the place of the fire. The duties of the Fire Commissioner are to enforce all the laws in the Province and the regulations made thereunder relative to the prevention of fires and storage, sale, and use of explosives, construction and regulation of fire escapes, the means and adequacy of exit in case of fire from public buildings and other places where numbers of persons congregate, and the suppression of arson and investigation of the cause and origin of fires. Every fire is to be investigated within three days of its occurrence by the local assistant and a report as to its cause and origin sent to the Fire Commissioner. The Commissioner shall have power to summon witnesses and to compel them to give evidence. If he is of the opinion that there is evidence sufficient to charge a person with the crime of arson or an attempt to commit arson, is he to report to the Attorney-General with a view to a prosecution. The Fire Commissioner, his deputies, inspectors, or local assistants, shall, upon complaint or without complaint, inspect all buildings and premises within their jurisdiction, and any orders given by said officers shall be complied with by the owner or occupant of the premises. Expenses are to be met by a tax upon all companies doing fire in-

surance in the Province of a sum not exceeding one-third of 1 per cent. of their premium receipts and assessments. Penalties are provided for violation of the Act.

Women's Institutes.—By the Women's Institute Act (No. 9) any eight women may make application, on a form provided, to the Minister of Agriculture to be organised into a Women's Institute for the improvement of social conditions in the community by means of:

(1) The study of home economics, child welfare, prevention of disease, and industrial conditions;
(2) Establishing the Women's Institute as a social and educational centre in the community and by utilising it as a means of welcoming new settlers;
(3) The encouragement of agriculture and agricultural conditions;
(4) The holding of demonstrations, lectures, short-course schools, competitions, meetings, conventions and such other utilities and attractions as may be deemed useful for the promotion of objects of the institute.

Full provision is made for the election of officers, the holding of meetings, the adoption of by-laws, the owning and dealing with property, for an annual provincial convention and for a provincial advisory board. Community development is the key to national unity, and this Act gives the women of Alberta an opportunity to use their influence in making rural life more attractive.

Probate.—By No. 10 the administration of lunatics' estates will be done under the supervision of the Government and with the least expense possible instead of being left with trust companies.

An Ordinance (No. 13) respecting the devolution of estates contains two important amendments:

Where a man dies intestate, leaving a widow and one child only, one-half of the property shall belong to each.

If the parents of child born out of wedlock afterwards marry such child shall be deemed the legitimate child of such parents

Finance.—By No. 12 the Government is authorised to raise by way of loan a sum of money, not exceeding $2,000,000, for the public service, for the covering of any debt of the Province on open account, for paying any floating indebtedness, for carrying on public works, and for the satisfaction or discharge of any obligations

of the Province. The money may be borrowed at a rate of interest not to exceed 5 per cent. per annum.

Vital Statistics.—The new Vital Statistics Act (No. 13) prescribes the duties of the Deputy Registrar-General of Vital Statistics and District Registrars in regard to the registration of births, marriages, and deaths, returns as to population statistics, and also sets out the duties of cemetery caretakers. It fixes heavy penalties for neglect or refusal to report births, marriages, deaths, or burials within the time limit mentioned. As the country becomes more populous and property more valuable, and in view of the large number of persons joining the army for active service, it is necessary that a careful record of vital statistics should be kept, and it is the duty of the public to grant assistance in helping the officials to obtain as complete a record as possible.

Entertainment Tax.—The Theatre Goers' Taxation Act (No. 14) gives the Lieutenant-Governor in Council power to tax each admission to any theatre, opera, concert, vaudeville show, or moving picture show on a sliding scale of 1 cent. to 25 cents. Soldiers in uniform are not called upon to pay this tax. Entertainments for religious, charitable, or patriotic purposes are exempt.

Education.—By No. 17 provision is made for the erection of any portion of the Province into a school district by order of the Minister should there appear to be a need of school facilities. If deemed desirable the Department may arrange for conducting a school in a temporary building or in a tent suitable for this purpose. This will make it possible to provide for the education of children in outlying districts where the establishment of an ordinary school district is not feasible.

It is provided that all school buildings shall be built under contract and not by day labour, such contract to be approved by the Department.

It is the duty of every school board to provide a flagpole with all the requisite attachments and to furnish a flag, which shall be the British Union Jack, and which shall be flown from the flagpole upon such days as may be prescribed by regulation, and when not so flown, displayed on the wall inside the schoolroom.

Arbor Day ceases to be a school holiday. Special exercises will, however, be provided by regulation for the purposes for which Arbor Day was originally intended.

In rural and village districts land to the extent of five acres held by or for the use of any hospital which receives a Government grant is exempt from taxation for educational purposes.

In the case of a rural school district lying partly within two or more rural municipalities the allocation of the amount of taxes to be raised on the portions of the school district lying within the respective municipalities shall be based on area, and should any portion of such rural school district lie outside of any rural municipality the board of trustees shall levy and collect upon that portion in the same manner as is provided for assessment in rural school districts.

The liability to taxation of personal property, buildings, and other improvements upon land shall no longer be determined by the board. Such property is no longer exempt, with the exception of live stock and farm implements used or kept on a farm, which are no longer liable to assessment.

The minimum school tax in a village district on any lot in any subdivision or plan shall be 25 cents, and if the lot contains one acre or more the minimum tax shall be 50 cents. In village districts the rate of taxation on unsubdivided farm lands situated outside the boundaries of a village shall not exceed ten mills on the dollar, except in case a higher rate is necessary to meet current debenture payments, when the Minister may authorise such higher rate.

Should the owner of a subdivision desire to have the plan cancelled the board may, subject to the approval of the Minister, enter into an agreement with the owner to accept in full settlement of arrears of taxes an amount less than the total amount due, in consideration of the owner procuring the cancellation of the plan.

The title of the Truancy Act has become a misnomer in as much as only a small proportion of cases dealt with under the Act are cases of truancy. The title has accordingly been changed to " The School Attendance Act " and, in accordance with the change of title, all truant officers, whether local or Provincial, will hereafter be designated " attendance officers." The procedure under the Act remains practically unchanged, with the exception that a parent or guardian in a consolidated school district may be prosecuted for the non-attendance of his children provided they do not reside more than one mile from a road travelled regularly by a conveyance provided by the district.

Life Insurance.—By the Life Insurance Beneficiaries' Act

(No. 18) the following persons shall have an insurable interest, that is to say:

(*a*) A parent in the life of his child under twenty-one years of age; (*b*) A husband in the life of his wife; (*c*) A married woman in the life of her husband; (*d*) Any person who has a pecuniary interest in the duration of another person's life, in the life of such other person; (*e*) Every person in his own life.

"Preferred beneficiary" means the husband, wife, child, grandchild, or mother of the assured.

Any person twenty-one years of age may insure his own life and may designate the beneficiary by declaration and, subject to the provision as to preferred beneficiaries, may in the same way alter, revoke, or divert the insurance money. A person of fifteen years of age may insure his life for the benefit of himself, his estate, or of a preferred beneficiary, or of a father, brother, sister, or grandparent, and may deal with such insurance as if of full age.

No contract of insurance is valid on the life of a child under one year of age at time of insurance. Insurance on the life of a child under ten years of age must be for a limited amount only, and the sub-section of the Act governing the amount must be set out in the contract in conspicuous type.

Where the contract or a declaration provides that the insurance money or part thereof is to go to a preferred beneficiary, such contract is subject to the rights of the assured to a portion or all to create a trust in favour of such beneficiary, and so long as any object of the trust remains the money shall not be subject to the control of the assured or of his creditors or form part of his estate.

The assured may, by declaration, change the benefits of the insurance from one to another of the preferred beneficiaries, but, except where the preferred beneficiaries die, he cannot by declaration transfer the benefits to any one outside of the preferred class.

Hail Insurance.—By an amendment (No. 19) of the Municipal Co-operative Hail Insurance Act 25 per cent. of the electors of a municipality may, before October 1 in any year, petition the council to submit a by-law at the next annual election empowering the municipality to unite with the Hail Insurance District. If a majority of the electors vote for the by-law the council must finally pass same on or before January 10 next after the voting.

Power to borrow money is confined to the purpose of carrying on the business other than the payment for losses by hail.

The insurance on wheat and rye covers from June 1 to September 15 instead of from June 16 to September 15 as formerly.

No loss is to be paid unless it amount to 5 per cent. of the actual value of the crop.

If the levy made in March of each year is not sufficient to pay all losses the board may make a second levy in September, provided that the total levy shall not exceed 10 cents per acre. If the two levies are insufficient to pay all losses in full the amount shall be apportioned and shall be taken as final settlement for that year. Money due for losses by hail is made exempt from garnishment or attachment, except for the purchase price of the seed, and cannot be assigned. Levies in arrears shall pay 8 per cent. interest.

Unpatented homesteads, pre-emptions, or purchased homesteads with less than twenty-five acres under cultivation may be withdrawn before June 1 and be exempt from taxation.

Stock Inspection.—By the Stock Inspection Act (No. 21) every consignee must furnish the inspector at point of receipt with a copy of the certificate of inspection issued by the inspector at the point of shipment. He must also exhibit the certificate on request to any inspector where the stock is held for feed or rest.

No person shall place any stock in a railway car unless same has been inspected and a certificate obtained. This certificate shall be in triplicate, signed by the inspector of stock and the shipper. One shall be attached to the bill of lading of the shipment for the consignee, one retained by the inspector, and the third, with a memorandum attached thereto from the shipper, signed by the owner or his agent, setting forth the age, sex, colour, and brands of the stock and the name and address of the person from whom purchased, shall be sent to the Department on the first day of the month following. No railway agent shall accept for shipment any live stock until certificate of inspection has been presented to him, personally signed by the shipper and the inspector.

A new section relating to drovers provides that when any person desires to drive his stock twenty miles or more, or to a point outside the Province, he shall procure a certificate from an inspector. Also, when any person is driving stock from one place to another in the Province or to a place outside the Province, which stock are not

branded with the person's recorded brand, he shall supply himself with a bill of sale of the stock from the vendor thereof, showing the number and class of same and the last recorded brand. Any person shall have the right to inspect travelling stock and to compare the brands thereon with the certificate or bill of sale, and any refusal to submit to such inspection shall be deemed an offence against the Act. These provisions shall not apply to a person driving stock to or from any shipping point within the Province reasonably close to the place from or to which such stock are being brought nor to the driver of an animal which has strayed.

Municipal Legislation.—Few amendments were made to the statutes dealing with municipal affairs and most of those made were simply for the purpose of assisting in the administration of existing provisions.

Among the most important items are the amendments to the Rural Municipality Act, the Village Act, and the Town Act, whereby each municipality taking tax enforcement proceedings and selling land on account of such proceedings is now required to protect the interest that any other municipality or any school district may have in such land because of outstanding taxes. Provision is also made in each of the three Acts above mentioned whereby confirmation of tax enforcement returns is dealt with at a sitting of the District Court. This change will do away with the expense and trouble of arranging for a hearing by a judge at a time other than that when a sitting of the Court is held.

The three general Municipal Acts and the Local Improvement Act are amended to make it possible to compromise arrears of taxes on subdivided lands. This compromise is subject to the approval of the Minister of Municipal Affairs. Much land was subdivided in the past that has never been and is never likely to be required for building purposes. It is desirable that this land should, if possible, be made use of in some way. In many cases the subdivision promoter has ceased to take any interest in the land and while the original owner would be glad to make use of it as farm land, the accumulation of taxes makes it impossible for him to do anything with it. By arranging a compromise on the outstanding taxes it would, no doubt, be possible to have many subdivision plans cancelled and the land used as farm land.

In the Rural Municipality Act (c. 18) a change was made in con-

nection with the provision dealing with collection of hospital bills. This change relieves the mortgage holder of what has sometimes been an unjust lien against the land and gives the municipality ample power in other ways to enforce collection of such accounts.

Additional temporary taxing powers are given to towns whereby they may tax buildings and improvements if they so desire for a period of four years from December 31 last. Some provision of this kind may be necessary in some of the towns to enable them to meet the unusual financial conditions.

For the same reason villages are given similar temporary taxing powers in connection with buildings and improvements if they wish to use them. Villages are also given similar power to that now held by towns in connection with the temporary levying of a business tax if they see fit.

The Timber Areas Tax Act was amended by No. 3 so that the rate of taxation on timber lands was reduced from $2\frac{1}{2}$ cents to 1 cent per acre.

Very little change was made in the Wild Lands Tax Act, but it is worthy of note that an amendment in No. 3 has become law whereby patented homesteads held by the original homesteader are exempt from the Wild Lands Tax while the owner is absent on active military or naval service. This is in recognition of the sacrifice being made by the homesteader who has volunteered for active service.

The Local Improvement Act was amended by No. 3 to give the council of a local improvement district power similar to that of the council of a rural municipality in connection with arrangements being made for hospital attention for residents of the district.

The amending Act No. 3 respecting subdivisions should be of considerable assistance to municipalities. By this Act the Board of Public Utility Commissioners is given power to arrange for the cancellation of sub-divisions within the boundaries of municipalities or local improvement districts. While many owners of subdivided lands have been desirous of having their plans cancelled and the land made use of as farm land, it has been impossible for them to move in the matter because of a few lots scattered throughout the subdivision having been sold and the purchasers could not be persuaded to give up their claim for any reasonable consideration. The Board of Public Utility Commissioners have been given power to arrange matters of this kind and in addition they have power to order the cancellation

of a subdivision where they are of the opinion that such subdivision is not required for building purposes.

Hire Purchase Agreement.—No. 3 amends the Hire Receipts and Conditional Sales of Goods Ordinance. To preserve the rights contained therein, a statement of the amount still due for principal, interest, and of all payments made on account of hire receipts and lien notes must be registered within thirty days next preceding the expiration of two years from the filing of said hire receipts or lien notes, together with an affidavit of the vendor or bailor or agent stating that such statements are true and that the sale of bailment writing was not kept on foot for any fraudulent purpose. There is a proviso in respect of any lien note or hire receipt which has been registered two years or over that same may be filed within six months of the passing of the amendment.

After the filing of the first statement additional statements have to be filed within thirty days next preceding the expiration of one year from the day of the former filing, and so on from year to year.

Poisons.—The Alberta Pharmaceutical Association Act (No. 38) gives a person duly appointed for that purpose by resolution of a local union of the United Farmers of Alberta or of the council of a rural municipality the right to sell strychnine or other poison for the destruction of gophers to a member of such local union or to a resident of such rural municipality, provided such poison is sold in sealed glass or metal packages distinctly labelled with the name of the article and the word "poison," and provided further that the seller shall make an entry in a book to be kept for that purpose, giving the particulars of the sale, to which entry the purchaser must affix his signature.

Land Registration.—The Land Titles Act (No. 24) provides a procedure to compel registration of a transfer. There are also new provisions as to the preparation and filing of plans by a railway company.

An amendment also provides that where proceedings in respect of any mortgage or encumbrance have already been or hereafter shall have been commenced, no proceedings for the enforcement of the covenant for payment shall be commenced, or if commenced shall be continued, until sale of the land mortgaged or encumbered or agreed to be sold has been had or foreclosure ordered, and levy

shall then be made only for the amount of the judgment or mortgage debt remaining unsatisfied with costs.

Marriage.—By the Marriage Ordinance (No. 46) if one or both of the parties to an intended marriage is under the age of twenty-one years, then, before a marriage licence is issued in respect thereof, or in case where no marriage licence is required, then before the publication of the banns thereof, or before any such marriage is performed or contracted, one of the parties to the intended marriage shall deposit with the issuer of marriage licences or with the minister or clergyman or other person authorised to perform the marriage ceremony a consent in a form given. The persons whose consent in such form shall be deposited are the father and mother, or such of them as may be living, of each of the parties to the intended marriage where the parties are under eighteen years of age, and the father or the mother where the parties are between the ages of eighteen and twenty-one years; if both the father and mother of either or both of the parties to the intended marriage are not then living, then a lawfully appointed guardian or the acknowledged guardian who may have brought up or may for three years immediately preceding the intended marriage have supported or protected such party or parties respectively.

Special provisions deal with parties who do not desire to be married by a clergyman or minister of any religious denomination.

Public Utilities.—The Public Utilities Act (No. 6) applies to all public utilities owned or operated by any company subject to the legislative jurisdiction of the Province. The amendment adds any company which has, by virtue of an agreement with any municipality, submitted to the jurisdiction of the board.

There is provision that no municipality shall enter into any agreement with or grant any franchise to any company the business or operations of which are not subject to the legislative authority of the Province, unless there is contained in such agreement or grant a provision bringing the business and operations of the company under the control and supervision of the board. Any agreement entered into contrary to such provision shall be absolutely null and void.

3. BRITISH COLUMBIA.

[*Contributed by* E. C. MAYERS, ESQ., LL.B.]

Acts passed 1916—Public, 87; Private, 11.

The legislation of the last Session of the Legislative Assembly is remarkable for the boldness and ambition of its scope.

The enactments may be classified according as they are essays on State Socialism, or endeavours to meet the conditions created by the war, or relate to registration, municipal matters, companies, taxation, insurance, or amendments of the general law:

Workmen's Compensation.—The Workmen's Compensation Act (No. 77) as regards the employments to which it relates abolishes all common law and statutory rights hitherto existing of the workman to recover compensation for injuries sustained by him in the course of his employment, and substitutes therefor the provision for compensation contained in the Act (s. 11). It is expressly provided that the Act shall not apply to farm labourers or domestic servants, and applies to all workmen except persons engaged as travelling salesmen or in clerical work and not exposed to the hazards incident to the nature of the work carried on in the industry, persons whose employment is of a casual nature, and outworkers and members of the family of the employer (s. 4). Other industries may be admitted on the application of the employer, and the employer may cause himself and his dependents to be admitted as entitled to the same compensation as if the employer were a workman (s. 5). Compensation is to be paid for any person injured by accident arising out of and in the course of the employment in any of the industries enumerated or admitted, after the workman has been disabled for more than a period of three days, except where the injury is attributable solely to the serious and wilful misconduct of the workman, which deprives the offender of the right to compensation unless the injury results in death or serious and permanent disablement (s. 6). Compensation is also payable in respect of disablement or death from anthrax, lead poisoning, mercury poisoning, phosphorus poisoning, arsenic poisoning or ankylostomiasis, where any of those diseases are due to the nature of the employment (s. 7). No compensation is payable in respect of accidents happening out of the Province except in certain specific cases where the employment

without the Province is connected with the industry operating within the Province (s. 8). A workman may bring an action against persons liable for injuries sustained by him other than the employer and the Board hereinafter mentioned is subrogated to the rights of the workman (s. 10). A Board of Commissioners is constituted consisting of three members to be appointed by the Lieutenant-Governor in Council, for the purpose of carrying out the provisions of the Act (s. 56 *et seq.*). The powers of the Board are very extensive, being largely of a judicial nature (s. 64). While the Board is not confined to judicial action, but is empowered to act upon the report of any of its officers (s. 65). The Board has exclusive jurisdiction to determine all questions of fact and law arising in the administration of the Act, and is made irresponsible by sweeping provisions depriving all parties of all the existing legal remedies for questioning and reviewing the decisions of lower courts (s. 67). The Board is rendered an irresponsible body accountable to none, but with power to rehear and review its own decisions apparently without limit (s. 68). No part of the necessary funds for providing compensation is to be raised from the workmen (s. 13); with the exception of 1 cent per day or part of a day, which the employer is entitled to deduct from each workman's wages as a contribution towards the cost of medical aid (s. 30). It is rendered impossible to contract out of the Act (s. 12), and the compensation payable to any workman is rendered incapable of being assigned, charged, or attached (s. 14). The necessary funds are to be raised by assessments upon the employers made by the Board (s. 29) in proportion to the wages-sheet of the employer (s. 28) at rates varying with the different classes of industries (ss. 26, 27, 28, 29, and 32). The Board is empowered to enforce payment of any assessment without the formality of any action, by merely filing its certificate in any district registry of the Supreme Court or County Court and issue execution thereupon (s. 34), and heavy penalties are imposed for failure to pay (s. 36). The Lieutenant-Governor in Council is empowered to contribute fifty thousand dollars out of the consolidated revenue fund towards the expenses incurred in the administration of the Act (s. 31); the scale of compensation and the duration of payments are provided for in ss. 15, 16, 17, 18, 19, and 20, as follows:

15. (1) Where death results from the injury, the necessary expenses of the burial of the workman, not exceeding the sum of seventy-five

dollars, shall be paid in addition to all other compensation payable under this section.

(2) Where death results from the injury, compensation shall be paid to the dependents of the deceased workman as follows:

(*a*) Where the dependent is a widow or an invalid widower without any dependent children, a monthly payment of twenty dollars during the life of such surviving spouse;

(*b*) Where the dependents are a widow or an invalid widower and one or more children, a monthly payment of twenty dollars, with an additional monthly payment of five dollars for each child under the age of sixteen years and for each invalid child over that age, not exceeding in the whole forty dollars;

(*c*) Where the dependents are children without any widow or invalid widower not exceeding in the whole forty dollars;

(*c*) Where the dependents are children without any widow or invalid widower, a monthly payment of ten dollars to each child under the age of sixteen years and to each invalid child over that age, not exceeding in the whole forty dollars; and

(*d*) Where there is no widow, invalid widower, child under the age of sixteen years, or invalid child over that age as a dependent, but the workman leaves other dependents, a sum reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, to be determined by the Board, but not exceeding twenty dollars per month to a parent or parents, and not exceeding in the whole thirty dollars per month;

(*e*) In any case within the provisions of clause (*a*) or (*c*), if the workman leaves a parent or parents who are dependents, the Board may in its discretion award to the parent or parents a sum to be determined by the Board, but not exceeding twenty dollars per month, and not exceeding with the compensation otherwise payable under this sub-section forty dollars per month.

(3) Where there are both total and partial dependents, the compensation may be allotted partly to the total and partly to the partial dependents.

(4) The payments provided under clause (*d*) of sub-section (2) shall continue only so long as, in the opinion of the Board, it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependents.

(5) Payments in respect of a child under the age of sixteen years shall cease when the child attains the age of sixteen years or dies, provided that in case the child at the time of attaining the age of sixteen years is an invalid the payments shall continue until the child ceases to be an invalid. Payments in respect of an invalid child over the age of sixteen years shall cease when the child ceases to be an invalid or dies.

(6) Where a payment to any one of a number of dependents ceases,

the Board may in its discretion readjust the payments to the remaining dependents so that the remaining dependents shall thereafter be entitled to receive the same compensation as though they had been the only dependents at the time of the death of the workman.

16. (1) If a dependent widow marries, the monthly payments to her shall cease, but she shall be entitled in lieu of them to a sum equal to the monthly payments for two years.

(2) Sub-section (1) shall not apply to payments to a widow in respect of a child.

17. (1) Where permanent total disability results from the injury, the compensation shall be a periodical payment to the injured workman equal in amount to fifty-five per centum of his average earnings and shall be payable during the life-time of the workman.

(2) The compensation awarded under this section shall not be less than an amount equal to five dollars per week, unless the workman's average earnings are less than five dollars per week, in which case he shall receive compensation in an amount equal to his average earnings.

18. (1) Where permanent partial disability results from the injury, the compensation shall be a periodical payment to the injured workman equal in amount to fifty-five per centum of the difference between the average earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident, and the compensation shall be payable during the life-time of the workman.

(2) Notwithstanding the provisions of sub-section (1), where in the circumstances the amount which the workman was able to earn before the accident has not been substantially diminished, the Board may, in case the workman is seriously and permanently disfigured about the face or head, recognise an impairment of earning capacity, and may allow a lump sum in compensation.

19. (1) Where temporary total disability results from the injury, the compensation shall be the same as that prescribed by section 17, but shall be payable only so long as the disability lasts.

(2) The compensation awarded under this section shall not be less than an amount equal to five dollars per week, unless the workman's average earnings are less than five dollars per week, in which case he shall receive compensation in an amount equal to his average earnings.

20. Where temporary partial disability results from the injury, the compensation shall be the same as that prescribed by subsection (1) of Section 18, but shall be payable only so long as the disability lasts.

The Board has power to furnish any injured workman with medical, surgical, and hospital treatment, nursing, medicine, crutches, and other apparatus, including artificial limbs (s. 21).

Provision is made for commutation of payments (s. 24); the workman is compelled to give notice of accident, but failure to give notice does not destroy the right to compensation unless the Board so decrees (s. 42). The Province is made liable for the safe-keeping of the Accident Fund (s. 48), and provision is made for the auditing of accounts and the investment of any surplus (ss. 48 and 49). The "Workmen's Compensation Act," which was a close copy of the Imperial Workmen's Compensation Act 1897, and the "Employers' Liability Act," which was an exact copy of the Employers' Liability Act 1880, are repealed, but as regards employment not within the Act the latter Act is practically re-enacted in a more stringent form by the present Act (ss. 75 and 71), which also abolishes the doctrine of common employment and deprives the employer of the defence of contributory negligence (s. 72).

Shipping.—The "British Columbia Shipping Act" (No. 57) is directed to provide for three purposes, namely, the making of loans upon ships to be hereafter constructed within the Province, provide subsidies for ship-owners and the establishment of ship-building yards. A Board of Commissioners is created to be called the "Shipping Credit Commission" (s. 4), consisting of a superintendent and directors, one of whom is to be the Deputy Minister of Finance (ss. 5 and 7). The Commissioners are empowered to appoint officers and clerks and to make and publish regulations for carrying out the provisions of the Act (ss. 10, 11, and 12). The Commissioners are constituted a body corporate with the usual powers of such a body (s. 4); provision is made for the execution of documents (s. 13); for the head office (s. 14); and district offices (s. 14); for the transcript of records (s. 15); official seal (s. 16); and the procedure of the Commissioners (ss. 17, 18, 19, and 20). The Commissioners have power to make loans on mortgage of all ships hereafter constructed and completed in the Province of British Columbia within twelve months from the coming into force of the Act, and used for the carriage of goods on ocean routes (s. 21), and the Commissioners are empowered to take as collateral security for any loan, mortgages on any real or personal property (s. 21). A series of sections deals with the regulations to be observed in making loans (ss. 35, 36, 37, 38, 39, 40, and 41), and a number of conditions are imposed which practically transfer the management of the vessel on which a loan has been made to the Commissioners (s. 44);

a loan is made repayable in five equal annual instalments (s. 46), and may be cancelled or withdrawn (s. 47). The Commissioners have power in case of default, without the intervention of a Court of law, to seize and dispose of any property given as security for the loan (ss. 47 and 48), and also to appoint a Receiver (s. 50). Provision is made for payment of a subsidy in ten annual instalments to the owners of all ships to the number of twenty-five hereafter constructed and completed within the Province of British Columbia within twelve months from the passing of the Act; the annual instalments to be such as will, together with the net earnings of the ship, amount to 15 per cent. (15%) on its cost. Such subsidies are to become payable only in the first year after the declaration of peace in respect of the present war, and are conditional upon the use of the ship in British Columbia in carrying cargoes to and from the Province (s. 53). The Commissioners are empowered to contract with any person or company for the establishment of shipbuilding, repairing and docking yards in the Province or for the extension, acquisition, or improvement of an existing yard (s. 54). The money necessary for the carrying out of the provisions of the Act is to be supplied by the sale of securities guaranteed by the Province (s. 22), and provision is made for a reserve fund (ss. 29 and 30), a sinking fund (s. 31), and the administration of the funds provided for the carrying out of the Act (ss. 24, 25, and 26). The Minister of Finance is empowered to grant out of the Consolidated Revenue Fund of the Province a sum not exceeding $50,000 for the purposes of the Act (s. 55); the Act is to come into force on such date as may be fixed by Order in Council (s. 60).

Mines.—The "Mines Development Act" (No. 43), empowers the Minister of Mines to authorise the expenditure of so much of the public money as may be required by the Minister of Public Works for the construction of such trails, roads, and bridges as may be necessary for the development of mineral or placer claims in any mining district, or as may be necessary for facilitating the exploration of the mineral resources of any such district, and the sum of $200,000 of the Consolidated Revenue Fund of the Province is appropriated to this purpose.

Liquor Licensing.—The "British Columbia Prohibition Act" (No. 37) is intended to suppress the liquor traffic by forbidding the sale of liquor (s. 10) except by certain specific persons appointed by

the Lieutenant-Governor-in-Council (s. 4), who are prohibited from deriving any profit from the sale (s. 5), and who may sell liquor only in certain specific cases (s. 7) and under certain conditions. No person may keep liquor in any place other than in a private dwelling-house (s. 11), or in a chemist's shop or hospital (s. 14). Physicians, dentists, and veterinary surgeons are allowed to prescribe and keep liquor in certain specific cases upon keeping a record of the sale or other disposition (s. 14). The possession of liquor is permitted to persons engaged in mechanical or scientific pursuits or for sacramental purposes (s. 15). Brewers, distillers, and other persons duly licensed by the Parliament of the Dominion are permitted to keep liquors manufactured by them in any building wherein such manufacture is carried on (s. 18); the possession of liquor for export is permitted (s. 19). Penalties are provided for the illegal consumption or purchase of liquor, sales to minors and permitting of drunkenness (s. 21, 22, and 24), also for the harbouring of constables by persons permitted under the Act to sell liquor (s. 23), and for clubs, societies, etc., selling, bartering, or keeping liquor. The provisions for the enforcement of the Act and for the prosecution of offences under the Act are drawn in the usual stringent terms (s. 29 *et seq.*), and the right is conferred on the police force to search for liquor (s. 48 *et seq.*). The importation of liquor for use in a private dwelling-house is permitted (s. 57), and the coming into force of the Act is rendered dependent on the result of a referendum to be conducted at the next election.

Woman Suffrage.—The Woman Suffrage Act (No. 76) provides for the extension of the franchise to females upon the same terms, in the same manner, and subject to the same conditions as males, and this Act likewise is rendered dependent upon the result of a referendum to be conducted at the next Election.

Shop Hours.—The Weekly Half-holiday Act (No. 58) provides for the closing of all shops where any wholesale or retail trade or business is carried on, at 1 o'clock on one week-day in every week (s. 3); in the towns of Victoria, Vancouver, and New Westminster this provision is made subject to the result of a vote of the electors held in these towns (s. 4), and in other municipalities to a bylaw passed under the provisions of the "Shops Regulation Act" (s. 5); the day fixed for the weekly half-holiday may be varied on a referendum to the electors in any municipality (s. 6), and the Act is not to

apply to unincorporated districts except upon the intervention of the Lieutenant-Governor in Council (s. 7). Punishments are provided for offences under the Act (s. 11).

Dairies and Dairy Produce.—The Dairies Regulation Act (No. 16) prohibits the carrying on of business in any creamery or dairy as defined by the Act without a licence in that behalf (s. 3); milk and cream are to be tested by an inspector licensed under the Act (s. 4) and the Minister of Agriculture is empowered to make rules and regulations for the carrying out of the Act (s. 9).

The Eggs Marks Act (No. 18) divides eggs into a certain number of grades the lower of which are stigmatised as "cold storage eggs" and "Chinese eggs," all of which are carefully defined by the Act. Provisions are made for distinguishing the various grades by means of placards (ss. 3, 4, 5, 6, and 7), and for the inspection of the various grades (s. 9).

War Legislation.

Miners' Relief.—The Allied Forces Exemption Act, 1915, being Chapter III. of the Statutes of that year, made provision for the protection of the interests of free miners serving with the Allied forces. An amending Act (No. 4) keeps in force without further payment all free miners' certificates until May 31, 1917. The amending Act relieves the holders of mineral claims, placer mining claims and placer mining leases from the necessity of doing any work on their claims for two years instead of one (s. 3), and a sweeping provision is contained in s. 4 whereby the Lieutenant-Governor in Council is empowered to grant relief in all cases where in his opinion undue hardship may result to members of the Allied forces through the strict enforcement of the mining laws of the Province.

Free Grants.—The Pre-emptors' Free Grants Act (No. 35), provides for a free grant to every person who, being a lawful holder of a Certificate of Pre-emption, has entered upon the lands and subsequently been engaged in the active overseas military or naval service of His Majesty in the present war.

Soldiers' Homesteads.—The Soldiers Homestead Act (No. 59) has two objects, one to put an end to the scandal which has long existed of large areas of land within the Province being held by speculators either unable or unwilling to pay the amount of the

purchase price, and secondly to provide land for members of the Allied forces upon their return from the war. S. 4 provides that every application for the purchase of Crown lands in respect whereof any default in payment existed on December 31, 1915, shall be absolutely cancelled, and all the right thereunder of the applicant be abrogated and destroyed. By s. 5 an applicant for the purchase of Crown lands who has paid some but not all of the purchase price is enabled, by paying all interest in arrear on or before December 31, 1916, to obtain a grant of so many acres of the lands applied for as in relation to the total number of acres applied for is proportionate to the amount of the purchase price actually paid in relation to the total amount of the purchase price agreed to be paid. The lands resumed by the Crown under this Act are reserved from alienation (s. 6) and reserved for returned soldiers whom the Act defines (s. 2) as any person who in the Province of British Columbia enlisted in any branch of the Canadian Expeditionary Force or of the Canadian Permanent Forces or as a naval volunteer in any capacity during the war or in any branch of His Britannic Majesty's Army or Navy for war service in any capacity whatsoever, or in any branch of any Canadian or other British Colonial Land or Naval force, or who is a naval or military reservist or the widow of any party who if living would be entitled to claim under the Act, and women and minors who have enlisted in any of the branches of service before mentioned. Each such returned soldier is entitled to obtain out of the lands resumed by the Crown under the Act a pre-emption of land of such acreage as may be fixed by regulation made under the Act, by applying therefor within eighteen months from the date of his discharge from service (s. 7). In addition, portions of the lands resumed under this Act may be sold from time to time for the purpose of creating a fund to be used for making loans to returned soldiers in order that they may make improvements on their pre-emption claimed (s. 8). The remaining sections of the Act deal with the machinery for conducting the sales and the administration of the moneys realised.

Timber Licences.—The Forest Act Relief Act (No. 24) amends the Forest Act Relief Act, Chapter xxvii. of the Statutes of 1915. The Act of 1915 provided for the keeping in force of special timber licences notwithstanding failure to pay the fees, provided that the fees were paid within the specified period of delay together with a

penalty. The amending Act of this year provides that no person who s the registered holder of or had a registered interest in a special timber licence on December 31, 1915, and has been engaged in the active naval or military service of His Majesty in the present war, shall be required to pay any portion of the penalties which have become due under the principal Act since August 4, 1914, or may hereafter become due, until the conclusion of his service in the war (s. 3); s. 4 enables hand-loggers engaged in the active naval or military service of His Majesty in the present war to procure that the land covered by their licences be reserved until the conclusion of their services in the war.

Timber Export.—The Forest Act (No. 23), provides for the permitting by the Lieutenant-Governor-in-Council during the continuance of the war of the export from the Province of unmanufactured timber upon such terms and conditions as may be imposed (s. 9), thereby departing from the policy of the former Forest Acts which prohibit the export of unmanufactured timber, for the purpose of fostering industries within the Province.

Succession Duty.—The Succession Duty Act (No. 61) provides that where any person has died or shall die from wounds inflicted, accident occurring, or disease contracted within twelve months before death while in the active military or naval service of His Majesty, whether in Canada or abroad in the present war, the Minister of Finance may remit the whole or any part of the duty chargeable in respect of property passing upon the death of the deceased to ascendants, descendants, or collaterals in the first degree.

Absent Voting.—The Military Forces Voting Act (No. 41), contains elaborate provisions for the obtaining of the votes of citizens of the Province absent therefrom on active service in the present war.

Courts (Emergency Powers).—The War Relief Act (No. 74), provides immunity from civil proceedings for all residents of British Columbia, who, either being within the Province have enlisted or have left the Province to serve in the war, and also to the wives or dependent members of the family of any such persons (s. 2). Any action or proceeding already commenced is to be stayed (s. 2), and if any person shall after the commencement of any civil proceeding, enlist, such proceeding shall be incontinently stayed. The running of all statutes of limitations in favour of persons protected by the Act is stayed (s. 7). By

s. 5 it is intended to provide for the case of an action against several parties only some or one of whom would be entitled to the benefit of the Act, in which case it was intended apparently that the action could be prosecuted to judgment against the parties not protected by the Act and the remedies of the plaintiff against the party or parties protected by the Act should be reserved until the conclusion of the war.

Trusts.—The Execution of Trusts (War Facilities) Act (No. 68) empowers any trustee engaged in war service to delegate his rights and duties in the execution of the trust to any other person for any period during which he may be engaged on war service (s. 3). Power to so delegate his rights and duties is extended to any trustee who, although not engaged in war service, is unable to return from abroad by reason of the present war (s. 6). By s. 8 it is provided that any such trustee so delegating his powers shall be presumed to remain alive until proof of his death has been filed in one of the Land Registry Offices in the Province.

Registration of Documents.—New experiments in the matter of registration of documents are made in the Act to Amend the Bills of Sale Act (No. 8), the Act to Amend the Companies Act (No. 10), the Act to Amend the Land Registry Act (No. 32) and the Act for Preventing Frauds upon Creditors (No. 5) by secret assignments of book accounts. It is necessary to dwell a little on the history of the provision for registration of mortgages and charges created by a company. Under the Imperial Bills of Sale Act and Companies Act such mortgages and charges are excluded from the definition of Bills of Sale and provisions are contained in the English Companies Act for their registration in the registry of Joint Stock Companies. In the revision of the statutes of this Province in 1911 the English legislation was followed. Unfortunately by an Act of 1912 amending the Bills of Sale Act the words in the principal Act, excluding mortgages or charges created by a Company and required to be registered with the Registrar of Joint Stock Companies under the Companies Act from the definition of Bills of Sale, were struck out, but no provision was made for the registration of such instruments under the Bills of Sale Act, which in the case of debentures and debenture trust deeds was difficult if not impossible. Accordingly in 1914 provisions were made in the Act amending the Bills of Sale Act for the registration

of such instruments as Bills of Sale, by relaxing certain of the provisions of the Bills of Sale Act. It was still and has all along been necessary to register these instruments under the Companies Act, to the great inconvenience of companies issuing debentures, and accordingly it was apparently intended by the Act of this year amending the Bills of Sale Act to remove the necessity of registration of debentures and debenture trust deeds under the Bills of Sale Act. In order apparently to effect this design it is provided by s. 4 of the Bills of Sale Act Amendment Act that no trust deed or debenture may be registered under the Bills of Sale Act. The repeal of the exclusion from the definition of bills of sale of such instruments has not, however, been itself repealed, with the result that debentures and debenture trust deeds still continue to be included in the definition of bills of sale, which become void in certain circumstances unless registered, and at the same time the amending Act prohibits the registration of such instruments under the Bills of Sale Act. The result is that debentures and debenture trust deeds created by a company are prevented by an amending Act from being registered, while by the provisions of the principal Act they become void unless registered.

Another innovation has been made by the Bills of Sale Act Amendment Act of this year. The principal Act excluded from the definition of Bills of Sale any securities that may be taken under Chapter xxix. of the Revised Statutes of Canada known as The Bank Act. The words providing for this exclusion have now been struck out of the principal Act and in lieu thereof the following words have been substituted, namely: "any securities taken by a Bank under sub-section 1, 2, and 3 of Section 88 of Chapter IX. of the Statutes of Canada, 1913, known as the 'Bank Act' except where other provision is made by that Act or any amendment thereof." There are a number of other sections in the "Bank Act" providing for the taking by a bank of securities which may fall within the definition of Bills of Sale, and which, if the Bills of Sale Act Amendment Act of this Province is constitutional may require to be registered as Bills of Sale.

The Bills of Sale Act Amendment Act, and the Companies Act Amendment Act, contain elaborate provisions for the registration of mortgages and charges created by a company. The original sections in the principal Act were transcribed from s. 93 *et seq.* of the English

Companies Consoliation Act, 1908. These sections have now been repealed and a number of provisions inserted which are extremely difficult to construe and to carry into practice.

Choses in Action.—The Assignment of Book Accounts Act (No. 5) assimilates assignments of choses in action to bills of sale for the purposes of registration. Assignments for the benefit of creditors, marriage settlements, bills of exchange, promissory notes, bills of lading, and warehouse receipts are exempt (s. 3). Otherwise every assignment of book accounts must be attested and supported by affidavits of attestation and registered, in order to avoid becoming nullified as against assignees, receivers, or trustees of the estate of the person whose choses in action are comprised in such assignment and as against judgment creditors of such person enforcing their remedies and subsequent *bona fide* purchasers or mortgagees of such choses in action (ss. 4 and 8). Priority is to be adjusted according to the date of registration (s. 11). Subsequent assignments after the execution of a prior unregistered assignment are struck out (s. 10). Reassignments are exempt from registration (s. 12); power is given to the Court or a judge to rectify mistakes (s. 14) and indemnity against defects, omissions or irregularities in the execution or attestation of the assignment or in the affidavits of attestation is provided by s. 16, subject to satisfying the Court or a judge that such defect, omission, or irregularity has not actually misled nor was likely to mislead any person whose interests were affected.

Municipal Corporations.—The Municipal Act Amendment Act (No. 44), confers further powers upon the Council with regard to the appointment of officers (s. 5); the making of the inter-municipal agreements with regard to the exchange, sale of lease of watermains or pipes laid or installed along the boundary lines between municipalities (s. 7); the inspection of food (s. 10), the checking of the weight of bread (s. 11); the construction of municipal slaughter-houses (s. 12); the construction of sewers (s. 14). The provisions enabling municipal councils to borrow money and providing for the form of the bylaws exercising such power have been remodelled (ss. 20, 21, 23, and 24). The provisions enabling a municipal council to borrow money in anticipation of current revenue have also been reframed (s. 26). Power is given to render the debentures issued by municipal corporations transferable only by entry in the registry books of the corporation (s. 28). The right of appeal in the matter

of assessments from the Court of Revision has been attempted to be taken away (s. 37), and the machinery for the collection of taxes and the sale of land for arrears of taxes has been remodelled (ss. 38, 39, 40, 41, 42, 43, 44, and 45). Power is given to municipal corporations to revoke any licences for any trade, calling, business, occupation or purpose which the municipal councils are empowered to grant (s. 49).

The Local Improvement Act Amendment Act, No. 45, contains a number of provisions dealing with a special assessment roll (s. 3); the apportionment of local improvement charges in cases of the division of land (s. 5); the raising of temporary loans and the issue of debentures (s. 6); the abandonment of so much of bylaws as relates to the unfinished part of works only partially completed (s. 10), and assessments in cases of works undertaken before the passing of the Act (s. 11).

Trust Companies.—The Trust Companies Act Amendment Act (No. 67) repeals and re-enacts a number of the provisions of the principal Act, providing that no Trust Company shall do business unless registered, with certain exceptions specified in the amending Act (s. 2); defining the words "Company" and "Extra-provincial Company" (s. 3); providing for the case of companies which have and have not respectively abandoned their trust powers and which have or have not changed their trust names (s. 3); requiring the making of returns by extra-provincial companies (s. 6); and authorising a registered extra-provincial trust company to permit any director or officer to appoint an attorney to act for the company for the purposes of its trust business within the Province (s. 7).

Fire Insurance.—The British Columbia Fire Insurance Act Amendment Act (No. 28) also contains provisions as to the books to be kept by companies (s. 4). It empowers any company licensed under the Act to insure against loss or damage arising from defects in or injuries to fire extinguishing appliances (s. 2); enables property within the Province to be insured by contract entered into without the Province with any British or foreign insurance company or underwriters although unlicensed under the Act (s. 3). Companies licensed under the Act are obliged to file with the superintendent of insurance the names of all their agents in British Columbia. All policies are to be signed by resident agents, and penalties are imposed upon companies disobeying the provision of this section (s. 4).

4. MANITOBA.

[*Contributed by the* HON. H. A. ROBSON, K.C.]

SECOND SESSION—1915.

Acts passed—111; Public, 95; Local and Personal, 16.

Beekeepers.—Act (No. 3) provides for the incorporation of the Manitoba Bee-keepers' Association, with membership open to all persons paying an annual subscription of not less than one dollar. The Association shall be under the jurisdiction of the Department of Agriculture, to which Department shall be transmitted certified copies of the minutes of the annual meeting, and also a statement showing in detail the receipts and the expenditures of the Association on December 1 of each year.

Labour Bureau.—No. 6 provides for the establishment of a bureau styled "The Bureau of Labour," to be attached to the Department of Public Works. The duties shall be to collect and publish information and statistics relating to employment, wages, and hours of labour, co-operation, strikes, and other subjects of interest to working men throughout Manitoba.

Moratorium.—The Act (No. 10) Respecting Contracts Relating to Land provides: 1. Proceedings to realise under a registered judgment by sales of land shall not be taken or proceeded with until after lapse of one year from date of registration thereof; provided, however, a judgment creditor may prove his claim in proceedings under the "Mechanics and Wage-earners Lien Act." 2. All proceedings under power of sale and foreclosure proceedings are stayed until the interest, taxes, or fire insurance premiums are in arrear for one year. 3. Actions to enforce covenants are stayed for one year, subject to exception in regard to taxes and insurance. 4. All proceedings lawfully taken may be continued after staying period has elapsed.

Crop Payments.—In all cases in which a *bona fide* lease has been made, and a *bona fide* tenancy created, providing for payment of rent by a share of the crop, the lessor without registration is to have the right by No. 13 to the said rent in priority to the lessee or any one claiming under the lessee. The same provision shall apply to agreements for sale of land, and to mortgages, in which payments are to be taken care of by the share of the crop.

Dairies.—The Dairy Act, 1915 (No. 14) provides: (1) for the incorporation of five or more persons for purpose of manufacturing cheese and butter; (2) that the powers conferred shall be those incidental to any corporation; and (3) that such associations shall be under the supervision of the Minister of Agriculture. Provision is also made for the incorporation of "The Manitoba Dairy Association," for the purpose of encouraging dairying in the Province.

Liquor Licensing.—No. 39 makes provision for the establishment of a Board of Licence Commissioners for the whole Province, for the appointment of inspectors for local option territories, and also for the submission to a vote of a by-law reducing the number of licences by way of petition to the Council in writing, signed by at least 10 per cent. of the total number of persons appearing on the last voters' list.

Notaries Public.—By No. 48 no one but a British subject actually residing in the Province shall be appointed a Notary Public. All such commissions granted shall expire in two years unless renewed, unless the appointee is a barrister or solicitor residing within the Province.

1916.

Acts passed—145; Public, 125; Local and Personal, 20.

Constitution.—By the Initiative Referendum Act (No. 59) it is provided that by petition signed by persons numbering 8 per cent. of the total vote polled at the General Provincial Election last held previous to date of the petition, whose names appear on Lists of Electors last made under "The Manitoba Election Act" and presented in writing to the Legislative Assembly, written two weeks after the commencement of any regular session thereof, the people may submit a proposed law to the Assembly.

The Speaker is to verify the sufficiency of the petition or he may refer the matter to a judge of the Court of King's Bench. Such law will then be submitted by the Lieutenant-Governor in Council to a vote of the electors at the next following General Provincial Election.

Provision, however, is made that, should the Attorney-General be of opinion that such law is *ultra vires*, the Lieutenant-Governor in

Council shall take steps to procure the opinion of the Court, and, should the Court's decision be in the negative, such law shall not be submitted.

Provision is made whereby a special referendum may be demanded, in which case a vote must take place not more than six months after presentation of the petition; provided, however, that, where at the date of the presentation of the petition a less period than two years has elapsed from the date of the holding of the last preceding General Provincial Election or referendum vote upon the same or substantially the same proposed law, the said special referendum vote shall not be taken earlier than the expiration of the said two years, and if the law to be submitted is passed by the Legislative Assembly at the session at which it is submitted, without change, it shall not go to a referendum.

Provision is made whereby any law in force or any law about to be put into effect may be submitted on a petition, signed by 5 per cent. of the total vote polled at the General Provincial Election last held, to a vote of the electors of the Province, at the next General Provincial Election.

The Attorney-General may decide upon the sufficiency of the petition or may refer it to a King's Bench Judge.

Provision is also made for a special referendum, but a vote shall not be taken until after the expiration of two years after the last preceding General Election, or after a vote on the same or substantially the same law.

The result of the referendum vote is to be published by the Clerk of the Executive Council in the *Gazette* within thirty days after the election, and on the expiration of thirty days after such publication the result of such decision goes into effect.

A full text of all laws to be voted upon, together with argument for and against, are to be mailed to each elector sixty days before the date of the referendum vote.

Education.—The Public School Act (No. 97) is amended so as to provide for compulsory attendance. All children over seven years and under fourteen years shall attend school for full term in each school year.

No child under fourteen is to be employed during school hours while the public school is in session.

Provision is also made for the appointment of attendance officers

vested with police powers. Penalty $5 to $20, or imprisonment not exceeding twenty days.

Provision is made by another Act (No. 87) that where school accommodation is inadequate, as shown by the census, and the district is unable to provide increased accommodation without assistance, the department, after inquiry, shall have power to lend such district such sum or sums as are necessary for that purpose.

The provision hitherto in force giving parents right to demand a teacher of Roman Catholic faith is repealed.

Provision is made by the Industrial Farm Act, No. 57, to provide open-air employment, with moral and physical reformatory methods, for persons who would otherwise have been kept in idleness in the common gaols, the earnings of such persons so employed to go towards maintenance of their dependants.

The Board of Directors of the Dental Association, subject to approval of the Lieutenant-Governor in Council, by itself or in conjunction with the University of Manitoba, may conduct, under the powers conferred by No. 32, a school of dentistry. The University of Manitoba is to be the sole examining body.

It is further provided that it shall be unlawful for practitioners to employ any person as an operator in dental surgery, or practitioner in dentistry, who is not licensed and registered, and no such registered person shall practise under and for any unqualified person.

Provision is made by No. 55 for the organisation and encouragement of Home Economic Societies with object of stimulating an interest in the improvement of the individual home in both country and town.

Trade and Industry.—Provision is made by No. 33 whereby seven or more persons who desire to associate for the purpose of carrying on labour or any co-operative business may do so subject to :

(*a*) Submitting annual returns to Registrar of Co-operative Societies of Manitoba.
(*b*) Setting aside 10 per cent. of net profits for reserve fund.
(*c*) Paying not more than 7 per cent. per annum interest on stock.
(*d*) Dividing the balance among patrons of the Association who are shareholders or, by supplemental by-law, among non-shareholder patrons.

Such associations, when formed, subsist as long as any matter relating to the same remains unsettled, provided, however, that it may dissolve voluntarily; and no corporation, association, individual, or group of individuals which does not divide its profits wholly or in part, according to the patronage it receives from its shareholders, irrespective of amount of stock held, shall use the word "Co-operative."

To facilitate the establishment of commercial industrial undertakings in Manitoba, where undertakings have not been developed, and it is therefore not known that a fair return is promised from shares, stocks, bonds, or securities, a company may successfully apply for a special certificate. Upon establishing its claim, the proceeds of all sales of unissued stock of the company will be paid to a Trust Company in Manitoba, less legitimate expenses, in trust for development of the company only. Such shares are to be marked "Development Stock."

Provision is made whereby creditors may bring actions for debts amounting to $50 and less before the local police magistrate, writs in such actions being returnable in not less than six days and not more than twenty days from the date of issue. A decision of the magistrate may be registered as a judgment under the County Court Act.

Agriculture.—The Agricultural College is to be affiliated by No. 5 with the University of Manitoba.

Provision is made by No. 3 to set aside moneys to deserving settlers who have taken up land in the bush and wooded lands lying between Lakes Winnipeg and Manitoba, by supplying such settlers with heifers and cows on easy payments, secured by lien on the animals, and an undertaking from the settler that all surplus cream not required for his own use is to be sent to a co-operative creamery or cheese factory, under government supervision. All such animals are to be marked with the Government Brand.

The Dairy Act has been amended (No. 29) with a provision that on and after the first day of May 1916 no one shall act in Manitoba as a factory cheese-maker, creamery butter-maker, operator of a skimming station, or operator of a cream-receiving station, without a licence from the Department of Agriculture.

Before such licence will be issued, requirements as to buildings, locations, etc., must be passed upon by the Dairy Commissioner.

Labour, Wages, and Shops.—Provision is made by No. 13 for the appointment of a Secretary of Labour whose duties shall be to supervise the proper enforcement of the Shops Regulations Act, Bake-shops Act, Public Building Act, Manitoba Factories Act, and the Building Trades Protection Act.

The Factories Act (No. 41) is amended by a provision making it unlawful for any factory to be open or to employ any person in or upon the premises on any statutory legal holiday. The penalty for violation is a fine not exceeding one hundred dollars.

The object of the Fair Wage Act (No. 121) is to determine from time to time the minimum wage and maximum hours of all classes of workmen employed on public works.

Provision is made for the selection of a Board to be composed of one representative from the employer and one from the employees, together with an official of the Department of Public Works. The Board shall have full access to all information in hand or obtainable by the Bureau of Labour. The Bureau is empowered to inspect and examine all books, pay-rolls and records of any employer, to hold public hearings, subpœna witnesses, and has the powers of a judge of the Court of King's Bench, including power to administer oath.

The Board shall report annually to the Minister of Public Works, who may approve, disapprove, or amend any or all of its findings, and the Minister's decision shall be final. Thereafter the provisions of such findings shall be incorporated in all contracts thereafter made to which the Minister is a party.

It is further provided that no contracts can be sublet without the approval and consent of the Minister.

For the purpose of strictly enforcing and carrying into effect the provision of this Act, the Minister of Public Works is given the right to inspect works, and to settle the terms and conditions under which employees are working. Further, he may require at any time that the contractor file a list of names of workmen, rate of wages, and the amounts paid and unpaid.

It is provided by the Shop Regulation Act (No. 100) that no male child over thirteen years of age, and under fourteen, is to be employed more than two hours on any school-day, or more than eight hours on any school-holiday.

Further, that no person may employ any young person or woman about a shop for more than sixty hours per week, or more than

fourteen hours in any one day, or any young person as driver of a delivery rig for more than sixty-six hours in any one week. Seats are to be supplied for the use of females. A copy of the Act is to be posted up in all shops. Proper fire protection is to be supplied. The Act does not apply to members of a family working at home.

Legislation of a Public Nature.—Power is conferred by the Public Health Act (No. 85) upon the Lieutenant-Governor in Council to divide the Province into five health districts, and appoint an officer known as District Inspector of Health.

The Moratorium Act (No. 21) shall apply only to all contracts relating to land, where interest, taxes, insurance premiums are not over one year in arrears.

It is provided by the Election Act (No. 37) that petitioners must bring action to trial within six months from the presentation thereof, and further that the petitioners have right to appeal to the Court of Appeal for the Province, and to the Supreme Court of Canada.

It is provided by the Municipal Act (No. 72) that, should any municipality get into financial difficulties, the Lieutenant-Governor in Council may appoint an administrator who shall exercise all the powers of a municipal corporation.

Provision is made (by No. 81) for establishing an institution to be known as "The Old Folks' Home," which has for its object the maintenance and care of persons who are incapable, through old age, of supporting and caring for themselves. Application for admission may be made personally or through relatives or municipal authorities, and must be accompanied by a medical certificate as to the condition of the applicant, the expense of such application to be borne by the applicant, his relatives, or the municipality. From disorganised districts, application may be made direct to Minister of Public Works.

Provision is made by an Act (No. 69) to provide for dependent mothers by setting aside $15,000 each fiscal year from the Consolidated Revenue Fund for the purpose of supporting mothers.

The Marriage Settlement Act (No. 66) enacts that all marriage settlements shall be in writing, accompanied by an affidavit of execution and an affidavit of *bona fides* by each of the parties thereto, and registered with the county court clerk of the district in which the settler resides or carries on business.

Non-residents of Manitoba making such settlement must register the same within six months from the date of becoming a resident.

Further, non-residents commencing business in Manitoba, having made such settlement, must register the same within six months.

Otherwise such settlement shall be absolutely void as against the creditors of the settler, a subsequent purchaser or a mortgagee in good faith.

It is provided by No. 41 that where a devise is made to a public hospital, church, school, college, or for religious, philanthropic, or charitable purposes, and the testator leaves a dependant unprovided for, it shall be lawful for a trustee, with the approval of a King's Bench Judge, to give such dependant the proportion he thinks proper, without being charged with a breach of trust.

By No. 39 no elevator is to be operated without a certificate from the Bureau of Labour, and in order that it may be subject to inspection. All operators of elevators are to be licensed.

The Lieutenant-Governor in Council may make rules and regulations respecting the construction, operation, maintenance, and carrying capacity.

The Bureau of Labour is empowered with authority to enforce the Act, and penalise offenders.

The Council of any municipality, by No. 114, may make application to the Municipal Commissioner for the submission of a town planning scheme, and the commissioner may authorise the municipality to adopt such scheme, and raise funds on assent of ratepayers.

It is provided that a municipality may purchase and expropriate land for such scheme, and compensation shall be paid to all injuriously affected thereby, and further that the authority responsible for the scheme shall be entitled to half of the increased value of property so increased.

Workmen's Compensation.—Provision is made to protect workmen and their dependants from expensive litigation by the establishment of a " Workmen's Compensation Board," to have exclusive jurisdiction to examine into, hear, and determine all matters and questions under the Workmen's Compensation Act. Such decision is to be final and conclusive, and shall not be open to question, review, or interference by any Court.

The Act (No. 125) provides that compensation shall be paid to any workman who suffers personal injury by accident, arising out of and in the course of his employment, provided it is not due to wilful misconduct, and that the workman is disabled for a period of more than six consecutive working days.

If the dependant is not a resident of Manitoba, he shall not be entitled to compensation unless, by the law of the place or country in which he resides, the dependants of a workman, to whom an accident happens in such place or country, if resident in Manitoba, would be entitled to compensation, and compensation awarded in such a case shall not be greater than that payable in like case under that law.

The Board, however, may, notwithstanding the above, order to be paid to such non-resident dependant such sum as may be deemed proper, and order it to be paid by the insurance company, underwriter, or employer.

It is further provided that, should an injured workman be entitled to a right of action against a third party, such workman may elect whether to proceed with such action or claim compensation under this Act. However, should the amount recovered be less than the amount he is entitled to under this Act, the difference shall be payable as compensation to such workman or his dependants. Further, should the workman in such case elect to take compensation under this Act, the employer or insurance company, as the case may be, shall be subrogated to the rights of the workman against the third party.

All employers are, and shall be, personally liable. The liability of the principal is the same as that of the employer.

No action shall lie for the recovery of the compensation, but all claims for compensation shall be heard and determined by the Board without the intervention of counsel or solicitors on either side, except with the express permission of the Board, and the right of compensation shall be in lieu of all actions, and rights of action against the employer.

It is further enacted that any agreement between employer and workman to waive or forgo any of the benefits under this Act shall be absolutely null and void, and it shall be illegal for an employer, liable to pay compensation, to take contribution from any of his workmen.

Notice of accident and claim for compensation must be made within six months from date of accident, or in case of death within six months from time of death. It is also provided that every employer shall, within three days after the happening of an accident to a workman in his employ, notify the Board of the—

(*a*) Happening of accident and nature of it. (*b*) Date and time of its occurrence. (*c*) Name and address of workman. (*d*) Place where accident happened. (*e*) Name and address of physician who attended injury, and any other detail the Board may require.

It is further provided that where a worker suffers from an industrial disease, and is thereby disabled from earning full wages or his death is caused thereby, or is due to the nature of the employment, the said workman or his dependants shall be entitled to compensation, as if the disease were a personal injury, and such compensation shall be paid by his employer, provided that if it can be shown that the disease was contracted in other employment, or was the result of a gradual growth, the former employers shall contribute. Compensation in such cases shall be fixed on the basis of the earning capacity as hereinafter outlined.

1. *In all cases* the cost of nursing, care, etc., shall not exceed $100.
2. *In Case of Death—*
   (*a*) Burial expenses shall not exceed $75.
   (*b*) Where widow or an invalid husband is sole dependant the maximum payment is $20 per month, which ceases if the widow marries.
   (*c*) Where there are children $5 is payable for each child under sixteen years, with a maximum in all of $40 per month. Payments cease when a child attains the age of sixteen years.
   (*d*) When dependants are all children, $10 is payable for each child under sixteen years, with a maximum in all of $40 per month.
   (*e*) Where dependants are other than above, pecuniary loss shall be determined by the Board, but shall not exceed $20 per month to parents, and on the whole $30 per month.

In all, in any case, compensation shall not exceed 55 per cent. of the average earnings of the workman.

3. *In Case of Total Disability.*
   (*a*) *Absolute.*—Compensation shall be a weekly payment during the life of the workman, equal to 55 per cent. of his average

weekly earnings, during the period of twelve months last preceding such injury, no payment to be less than $6 per week.

(*b*) *Temporary.*—Compensation shall be paid only so long as disability lasts.

4. *Partial Disability.*

(*a*) *Absolute.*—Compensation shall be 55 per cent. of the difference between average weekly earnings before the accident and the average amount which he is now able to earn. If impairment, in the opinion of the Board, does not exceed 10 per cent., the Board may direct that a lump sum be paid.

(*b*) *Temporary.*—Compensation shall be paid only so long as disability continues.

Accident Fund.—The accident fund shall be provided by contributions by insurance companies, underwriters, insuring employers liable to pay compensation, and by employers carrying their own insurance, and the compensation payable by each in respect o accidents which happen in any industry shall be paid out of the contribution made by each.

It is further provided that each employer shall prepare once a year a complete statement of wages earned by all employees during the year past, and an estimate of the amount to be expended during the then current year, and such additional information as the Board may require, both verified by statutory declaration; also at the time of filing such statement every employer shall file with the Board a policy of insurance in form satisfactory to the Board, issued by a company or underwriter approved by the Board, providing for the payment to the Board of the compensation which may become payable by the employer.

In cases where business is of a temporary nature, the Board may permit the employer to file the policy or give security.

The Commissioner may, for rates charged by insurance companies, examine books and accounts, and may personally or by deputy enter the establishment of any employer for purposes of inspection.

Should any employer make default in insuring his employees, the Board may do so, and order the payment by the employer.

An administration fund shall be provided by a contribution amounting to $7\frac{1}{2}$ per cent. of the premiums charged by the insurers,

and every insurance company shall furnish the Board with a statement of all premiums charged.

It is provided that, before an insurance company or employer is approved by the Board, a sum in cash, as the Board may determine, must be deposited and be available for payment on account of compensation, this sum to be repaid when the company or employer withdraws.

Provision is also made whereby persons not actually employed as workmen such as clerks, outworkers, and persons whose employment is of a casual nature, who have suffered injury by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings, premises, or through the negligence of his employer, or of any person in his service, shall be entitled to take action against the employer. In case of death, the personal representatives of the workman shall be entitled to damages under an Act respecting compensation to families of persons killed by accident.

Further, where work is being carried into effect under any contract, and the person for whom the work is being done owns or supplies the works, machinery, or plant, and by reason of any defect therein injury is caused, or the injury is caused through negligence of the person for whom the work is done or some person in his employ, that person shall be liable to an action, as if the workman had been employed by him; provided, however, that should such workman have knowledge of such defect and continue in such employment, he shall be deemed to have voluntarily incurred the risk of the injury. But he shall not be deemed to have undertaken the risks due to the negligence of his fellow workmen. Contributory negligence, however, will be taken into account in assessing damages.

Amounts payable as compensation have priority over debts under the assignment Act, not to exceed $500.

An order of the Board for payment of compensation may be filed as a judgment in the Court of King's Bench, and may be enforced accordingly.

The Board may make regulations from time to time for carrying out the Act, subject to disallowance by the Lieutenant-Governor in Council.

The Board is to make an annual report to the Lieutenant-Governor in Council which is to be laid before the Assembly.

Taxation.—Provision is made by the Municipal Commissioners (Act) for the establishment of an Assessment Equalisation Board for the purpose of equalising assessments throughout the Province. A Report of the Board is effective three years, and shall be final and conclusive, and not subject to any appeal.

Provision is made by No. 109 for the issue of certificates to all persons operating places of public amusement on payment of a tax, which varies with the nature of the business conducted.

Provision is made by No. 111 empowering the municipal commissioner to levy upon all municipalities in the Province an amount equivalent to 1½ mills on the dollar, for patriotic purposes.

Intoxicating Liquor Law.—The object and purpose of the Manitoba Temperance Act (No. 112) is to prohibit provincial transactions in liquor, but it is specially provided that it is not intended to affect *bona fide* interprovincial and international transactions.

It is provided that:

(*a*) No person shall be allowed to keep liquor exposed for sale without a licence under this Act.

(*b*) That liquor cannot be kept in any place but a private dwelling, with the qualification that liquor may be kept:

(1) For mechanical business and scientific pursuits.

(2) In hospitals and sick-rooms.

(3) For purpose of interprovincial and foreign trade.

It is further enacted that:

(*a*) No liquor shall be consumed on licensed premises.

(*b*) No person shall sell or deliver liquor to illicit dealers.

(*c*) No doctor, dentist, or veterinary surgeon shall prescribe or administer liquor except in case of actual necessity.

Provision is made for the granting of licences to druggists (wholesale and retail), the organisation of the Province, penalties, prosecutions, and convictions.

Applications for licences are to be directed to the Department of the Attorney-General accompanied by affidavits of applicant, and of two reputable persons, verifying the correctness of statements therein made, together with a bond of $500 to His Majesty, with two good and sufficient sureties of $250 each. The Chief Inspector shall then make an investigation and report on:

(*a*) Buildings and how kept.

(*b*) Fitness of applicant to receive licence.

(*c*) Whether applicant is or is not true owner of the business to be carried on.

(*d*) General circumstances in each particular case.

A licence may be transferred with the consent of the Attorney-General.

Provision is made whereby complaints may be lodged with the Chief Inspector in writing, and, if signed by ten or more ratepayers resident near the premises complained of, accompanied by sum of 20 dollars, such complaint will be placed before the County Court Judge for the district, who will proceed to hear and summarily determine the matter of the complaint, and report the finding to the Attorney-General. Should the complaint be established, the licence shall be cancelled at once.

All licencees shall keep an accurate record of all sales of liquor on forms supplied for that purpose.

Provision is made for the organisation of the Province into districts in charge of local inspectors, who will report to the Chief Inspector, whose jurisdiction shall extend over the whole province.

Persons offending against any of the provisions of this Act shall be liable on summary conviction to a penalty for the first offence of not less than $200, nor more than $1,000, and, in default, imprisonment for not less than three months nor more than six months.

The duty of seeing that the provisions of this Act are enforced, shall devolve upon the inspectors in whom, along with police officers and police constables, is vested the right to enter and search any and every part of any place other than a private dwelling-house, as they think necessary.

The Chief Inspector shall keep a complete record of all licences, applications, bonds, and sureties, and shall report annually to the Attorney-General.

No member of the Legislative Assembly shall be a party to any bond given under this Act.

5. ONTARIO.

[*Contributed by* A. H. F. Lefroy, Esq., K.C.]

Demobilisation.—After two Acts dealing with Supply comes (No. 3)

an Act entitled The Soldiers' Aid Commission Act confirming an Order in Council of November 10, 1915, appointing a Commission—

To constitute a Central Provincial Committee and a Branch Sub-committee of The Military Hospitals Commission to take care of and to find employment for members of the Canadian Expeditionary Force who return to Canada during the period of the war, and to assist, advise, and co-operate with the said The Military Hospitals Commission, and with all provincial or local committees or organisations to attain the aforesaid objects.

The Act provides (s. 4) that:

The Commission may exercise the like powers with respect to, and may grant the same assistance to, members of His Majesty's Imperial Forces or the forces of any of the Allies who, as Reservists, and while resident in Canada, were called upon to serve in the Imperial Forces or the forces of any of the Allies, or who left Canada for the purpose of enlisting and did enlist in the Imperial Forces or the forces of any of the Allies to serve therein during the war as the Commission may grant to members of the Canadian Expeditionary Forces under the terms of the Order in Council hereby confirmed, and the like assistance may be granted to any person who, after enlistment in Canada for service in the war, and before going overseas, has been discharged on account of wounds, injury, or disease incurred or contracted while on service.

Resources for War.—No. 4 is an Act for the creation of a Provincial Committee to secure the organisation of the resources of Ontario for efficient co-operation with the Federal authorities in the prosecution of the war, and maintenance of the agricultural and industrial production of the Province.

Succession Duty.—The next enactment of the session which calls for special notice is s. 5 of the Succession Duty Amendment Act, 1916, c. 7, the constitutionality of which is doubted by some. It purports to amend s. 10 of the Succession Duty Act, 1914, by substituting a new section providing that—

10. (1) The Treasurer may appoint a Commissioner or Commissioners to—

(*a*) Ascertain and inquire into what property, if any, is subject to succession duty under the terms of this Act; the fair market value of such property, the amount of duty payable upon such property, and the persons liable therefor . . .

(*d*) Generally make inquiry as to any matter or thing arising under this Act in connection with the estate of any deceased persons.

The Act then provides:

(8) The report of the Commissioner may be filed in the Central Office of the Supreme Court . . .

(9) Upon the report being so filed, it shall become a judgment of the Supreme Court of Ontario, and may be enforced in the same manner and by the like processes as if the judgment had been made by a judge of the Supreme Court at the trial of an action.

(10) The judgment shall be entered in the same manner as a judgment of the Court at the trial.

The Act thus empowers the provincial Treasurer to take the construction of the Succession Duty Act under any circumstances which may be deemed or alleged to fall under its provisions, out of the hands of the regular judges and place it in the hands of a provincial Commissioner, giving him the jurisdiction of a Superior Court judge in the matter: and making no express provision for any right of appeal. But by s. 96 of the British North America Act it is provided that—

"The Governor-General shall appoint the judges of the Superior, District, and County Courts in each province."

The provinces, it is submitted, cannot appoint officials to exercise the jurisdiction of Superior Court judges, merely by calling them "Commissioners."

Mines.—The Mining Amendment Act (No. 12) contains a notable provision in a new section added to the Mining Act, viz.:

183 (*a*) Notwithstanding any agreement to the contrary, every person who performs labour for wages in connection with any mine, mining claim, mining lands, or works connected therewith, shall be paid such wages at intervals of not more than two weeks.

Labour Department.—The Trades and Labour Branch Act (No. 13) establishes as a branch of the Public Service of the Government of Ontario a "Trades and Labour Branch," to be attached to such one of the present departments of the Public Service as may be designated by the Lieutenant-Governor in Council, and to be under the direction and control of the Minister in charge of the department;

and there is to be a Superintendent of the Trades and Labour Branch, who is to rank as the deputy-head of a department. There is to be assigned to the Branch the administration of:

(*a*) The Bureau of Labour Act;
(*b*) The Stationary and Hoisting Engineers Act;
(*c*) The Building Trades Protection Act;
(*d*) The Factory, Shop, and Office Building Act;
(*e*) The Steam Boilers Act;

and of such other Acts relating to the protection of the persons or interests of the industrial classes as may from time to time be designated by the Lieutenant-Governor in Council. It is also to be the duty of the Branch to collect certain specified statistical and other information, and make certain inquiries and reports in the interests of trade and industry specified more particularly in the Act.

Water Power.—No. 20, which is an Act respecting the public development of water power in the vicinity of Niagara Falls, contains a provision with wide powers.

S. 7. "The exercise of the powers, which may be conferred by or under the authority of this Act or of any of them, shall not be deemed to be a making use of the waters of the Niagara River to generate electric or pneumatic power *within the meaning of any stipulation or condition contained in any agreement entered into by the Commissioners for the Queen Victoria Niagara Falls Park.*

Statute Law Amendment—The Statute Law Amendment Act, 1916 (No. 24), the usual Omnibus Act, contains many provisions, of which the following seem to call for special mention here:

13. In addition to the classes of persons named in s. 38 of The Evidence Act, an oath, affidavit, affirmation, or declaration for use in Ontario, may be administered, sworn, affirmed or made out of Ontario by a Colonel, or Major of the Canadian Expeditionary Forces on active service, out of Canada, and shall be as valid and effectual and shall be of like force and effect to all intents and purposes as if it had been administered, sworn, affirmed, or made in Ontario before a Commissioner for taking affidavits therein or other competent authority of the like nature.

19. The Statute of Frauds is amended by adding thereto the following as s. 13:

13. (1) No action shall be brought to charge any person for the payment of a commission or other remuneration for the sale of real property unless the agreement upon which such action shall be brought shall be in writing

and signed by the party to be charged therewith or some person thereunto by him lawfully authorised.

23. The Conditional Sales Act is amended by adding thereto the following section:

9*a*. Where the goods are in or upon premises with respect to which rent is in arrears, the landlord or other person exercising the right of distress shall have the right to distrain the goods upon payment to the seller or lender or other person claiming through or under him, of the amount owing thereon, and the landlord may add the amount so paid to his claim for the rent.

28. Notwithstanding anything in The Assessment Act contained, the Council of a local municipality may, by resolution, direct that during the present war and for six months thereafter, arrears of taxes in the municipality may not be collected by distress and sale of goods and chattels, and that all arrears of taxes may be collected under The Assessment Act in the same manner as if there were no goods and chattels liable to distress and sale.

Trusts.—The Execution of Trusts Act, 1916 (No. 29) is a statute under the provisions of which:

A trustee (whether a sole trustee or a trustee with others) may, notwithstanding any rule of law or equity to the contrary, by power of attorney, attested by one or more witnesses, delegate to any person capable of being appointed to be a trustee of the trust the execution during any period for which the trustee is engaged on war service within the meaning of this Act, and a further period of two months thereafter, of any trust of which he is trustee.

Companies.—The Ontario Companies Amendment Act, 1916 (No. 35) gives to provincial companies the full benefit of the judgment of the Privy Council in *Bonanza Creek Gold Mining Co.* v. *The King*, by enacting by s. 6 that a section shall be added to the Ontario Companies Act as s. 210, providing, briefly, that every corporation or company heretofore or hereafter created by or under any special or general Act of the old province of Upper Canada, or of Canada, or of Ontario—

shall, unless otherwise expressly declared in the Act or instrument creating it, have, and be deemed from its creation to have had, the general capacity which the common law ordinarily attached to corporations created by charter.

In other words a corporation shall have capacity to carry on its business in such other jurisdictions, whether other provinces or

Great Britain, or foreign countries, the laws of which shall permit it so to do.

Liquor Licensing.—The provisions of the Ontario Temperance Act (No. 50) are exceedingly rigorous. The temperance party in Ontario has at all times been very strong, and may be said now to have won a victory all along the line. The Act prohibits (s. 40) any person, not only from selling and bartering any fermented, spirituous, or malt liquors, without a licence obtained under the Act, but also (s. 41) prohibits any persons *having or keeping or giving such liquor* "in any place wheresoever, other than in the private dwelling-house in which he resides, without having first obtained a licence under this Act authorising him so to do," subject to the usual exceptions as, *e.g.*, keeping alcohol for mechanical or scientific purposes, or in hospital, while s. 53 (1) provides that—

Every society, association, or club heretofore or hereafter formed or incorporated, and every unincorporated society, association, or club, and every member, officer, and servant thereof, or person resorting thereto, who sells or barters or therein gives liquor to any member thereof or to any other person, and every person who directly or indirectly keeps or maintains, by himself or by associating or combining with any other or others, or in any manner aids, assists, or abets in keeping or maintaining any club-house, club, or association room or hall or other place in which any liquor is received or kept for the purpose of use, gift, barter, or sale as a beverage, or for distribution or division among the members of any society, club, or association by any means whatever, and every person who uses, barters, sells, or gives away or assists or abets another in bartering, selling, or giving away any liquor so received and kept shall be held to have violated s. 40 of this Act, and shall incur the penalties provided for the sale of liquor without licence.

(2) The keeping or having any liquor in the house, hall, or building, or in any room or place occupied or controlled by any such club, association, or society, or by any persons associating or combining together as aforesaid, shall be a violation of sub-s. 1 of s. 41 of this Act.

3. *Proof of consumption or intended consumption of liquor in such premises by any member of any such club, association, or society, or person, who resorts thereto shall be conclusive evidence of sale of such liquor.*

4. *The occupant of such premises, or any member of the club, association, or society, or person who resorts thereto shall be taken conclusively to be the person who has or keeps or sells therein such liquor, and any liquor found on such premises shall be liable to seizure in the manner provided by this Act.*

Those who infringe the above provisions are liable (s. 38) on

summary conviction to a penalty, for the first offence, of not less than $200 nor more than $1,000, and, in default of immediate payment, to imprisonment for not less than three nor more than six months. The statute has, it must be admitted, been received apparently with great complacency by all classes of the community.

Juvenile Courts.—Lastly, an advance is made in the right direction in No. 54—the Juvenile Courts Act, 1916—which provides that—

in every city, town and county in which the Juvenile Delinquents Act, 108, being c. 40, 7–8 Edw. VII. (Dom.) has been proclaimed or shall hereafter be proclaimed, there shall be a Court of Record, to be known as the Juvenile Court of the City, town, county, or other area as the case may be—

The statute makes provision for the establishment of the same.

6. SASKATCHEWAN.

[*Contributed by* R. W. SHANNON, ESQ., K.C.]

Acts passed—Public, 37; Private and Local, 9.

Legislative Assembly.—When an inquiry is in progress before the Assembly or a committee thereof, and it becomes necessary to take evidence outside the Assembly or committee, the Speaker is invested (No. 3) with authority to make an order for the examination upon oath of a witness before any person and at any place. For the purpose of this and certain other provisions of the Act, the Assembly is to possess the rights, powers, and privileges of a Court of Record. These provisions will enable evidence to be taken outside the Province in a proper case.

Patriotic Revenues.—The war has added considerably to the financial burdens of the Province in many ways, among others in support of patriotic, Red Cross, and other funds raised for the relief of volunteers and reservists and their families. In order to meet the increased expenditure, each municipality is required (No. 6) to levy and collect annually, by a special rate, an amount equal to one mill in the dollar on the total value of all the rateable property in the municipality, such rate to be known as "The Patriotic Tax."

Volunteers and Reservists.—Proceedings, judicial or extra-judicial, for cancellation, sale, or foreclosure, or upon a personal

covenant contained in an agreement for the sale of land or in a bond, mortgage, or other lien or encumbrance affecting land made by a volunteer or reservist, or the obligations of which have been assumed by or have devolved upon a volunteer or reservist, either before or after the date when the Act comes into force, cannot be taken during the continuance of the war or until the expiration of six months from its conclusion without the special leave of a judge of the Supreme Court (No. 7). Protection is also afforded to the personal property of volunteers and reservists against seizure or sale for taxes or under executions. Provision is made that where delay in taking proceedings is caused by the Act, such delay shall not prejudicially affect any right or interest which might otherwise lapse under the statutes of limitation.

Public Highways.—The Public Highways Act has been revised and amended (No. 8). The administration of the Act is in the hands of a Board styled "The Board of Highway Commissioners." This Board has the expenditure of a large sum of money devoted to the maintenance and improvement of the highways of the Province. It controls all matters pertaining to the construction and irrigation of ditches, drains, canals, telegraphs, telephones, or power transmission lines, pipe-lines, steam or electrical railways or other works, across or along any public highway, and it also makes regulations with regard to the subdivision of land into lots or blocks, with a view to having public convenience as well as sanitary requirements properly met.

Local Government Board.—Extensive powers are given to the Local Government Board for investigating and dealing with cases in which a municipal corporation or school district has failed to retire its debenture indebtedness as it falls due, or to make payment of outstanding accounts incurred by way of capital expenditure or to carry out any stipulation contained in a money bylaw. Among other things the Board may order the retirement of outstanding debentures and their exchange for others to be issued in lieu thereof, direct the consolidation of the existing debenture debt, and authorise the issue of new debentures to carry out the scheme, and order that taxes, whether in arrears or not, be set aside to be used for any specific purposes. There is no appeal to the courts from an order made under this Act (No. 11).

Hospitals.—Any two or more contiguous municipalities may co-

operate in establishing a union hospital (No. 12). A municipality here means a town, village, or rural municipality. Provision is made for the organisation of the union hospital board, for apportionment of the expenditure, and for levying the necessary rates.

Sale of Shares.—The Sale of Shares Act (No. 15) forbids any person selling or offering or attempting to sell in Saskatchewan any shares, stocks, bonds or other securities of the companies affected by the Act without a certificate from the Local Government Board. The Act does not apply to securities of the Dominion of Canada or of any province thereof, or of any foreign country or of any county, city, town, village, municipal school district, or local improvement district of any province or territory of Canada. Its purpose is to prevent the public from being swindled by worthless concerns into whose standing the ordinary citizen has no adequate means of inquiring. This Act is in the nature of what is called " Blue sky legislation " in the United States, where it has been extensively adopted.

Fire Prevention.—An officer is appointed, to be called " The Fire Commissioner," and he has several assistants, a deputy, an inspector, and subordinate clerks and servants. The important feature of this Act is that the chief of the fire department of every city, town, and village in which a fire department is established, and the mayor of every town or village where no fire department exists, and the secretary-treasurer of each rural municipality are to be *ex-officio* local assistants to the Fire Commissioner and subject to his directions with regard to all matters in connection with the prevention of fires or the inspection of buildings (No. 18).

Towns.—The Town Act has been revised and consolidated in a statute (No. 19) of 518 sections. Besides general powers of legislating for the peace, order, and good government of the town, the Council's jurisdiction is defined in eighty-four articles of s. 194, and in a number of other sections.

Game.—The Game Act (No. 30) contains a consolidation of the legislation upon the subject hitherto in force, but carefully revised and brought up to date. Close seasons are defined during which it is forbidden to hunt, trap, take, shoot at, wound or kill various classes of game. A provincial Game Guardian is appointed for enforcing the provisions of the Act, and he is furnished with a staff of local game guardians who act under his instructions. The

numbers of big game, and of the more important classes of birds, that may be killed by any one person during the season are strictly limited, and severe penalties imposed for breach of the provisions of the Act.

Butter and Cheese.—The Dairyman's Act (No. 32) provides for the incorporation of companies for the manufacture of butter or cheese, or both, or for the manufacture of ice-cream or the handling of sweet milk or cream. The Lieutenant-Governor in Council may assist any such company with a loan not to exceed $3,000 on certain conditions precedent being complied with. An official, the Dairy Commissioner, exercises general supervision over the dairy and creamery industries of the Province for the purpose of improving, as far as possible, the quality, and increasing the quantity of its dairy products. It is his duty also to protect the patrons of creameries and cheese factories in such matters as the correct testing of milk and cream for butter fat contents and the proper weighing and fair grading and classification of milk, cream, and butter. Extensive powers are given the Commissioner and his assistants of entering upon the premises of any creamery, factory, or cheese-buying station for the purpose of inspection.

Liquor Licensing.—By the Sales of Liquor Act of 1915 it was provided that a vote should be taken at the municipal elections of 1919 as to whether or not the system of government monopoly established by that Act should be continued. An amendment was made at the recent session (No. 35) altering the date of the referendum to the municipal elections of 1916 or such earlier date as might be fixed by proclamation.

Female Suffrage.—The Election Act is amended by No. 37 so as to give a vote to women in the provincial elections, and also to enable them to offer themselves as candidates and to sit in the Legislature. This is the response of the Government to a movement which has been vigorously carried forward for several years by the advocates of female suffrage.

Votes for Soldiers.—By No. 37 it is provided that every British subject, whether male or female, of the age of twenty-one or upwards, serving as a soldier, chaplain, surgeon, or nurse or in any other capacity in the military forces of Canada or in any corps attached thereto, raised for overseas service in the present war, who, within six months immediately preceding the date when he or she was

appointed to or enlisted in such forces or joined such corps, had been resident in any electoral division in Saskatchewan for a period of not less than thirty days, shall, while resident in Canada, notwithstanding his or her absence from such electoral division or from the Province, be entitled to vote in the electoral division. The Lieutenant-Governor in Council is to make regulations for taking the soldiers' votes.

Dentists' Professional Advertising.—The Dental Profession Act is amended by No. 37 to prevent the Dental Council from passing any rule or regulation interfering with the right of dentists freely to advertise their professional qualifications.

Mortgages on Growing Crops.—Upon the representations of the Retail Merchants' Association, farmers are permitted by No. 37 to give mortgages upon growing crops for debts incurred in the purchase of the necessaries of life. These mortgages are not to exceed in amounts 250 dollars in the aggregate upon the crops of 160 acres or 350 dollars in the aggregate upon the crops of 320 acres.

Workmen's Compensation.—By the Workmen's Compensation Act of 1910–11 the term "workman" is defined as meaning "every person who is engaged in any employment to which this Act applies, whether by way of manual labour or otherwise, but does not include any person employed otherwise than by way of manual labour whose remuneration exceeds 1,200 dollars a year." The limit laid down in the latter part of the definition has been raised by No. 37 to 1,800 dollars in order that railway conductors may get the benefit of the Act.

Municipal Hail Insurance.—The Municipal Hail Insurance Act of 1915 provides for the constitution of a Commission for its administration. Under the Act rural municipal councils are authorised by by-law to provide insurance for the owners of farm lands within their bounds against loss of their crops by hail. There is a limit set to the amount of the indemnity granted by the municipality. The Act has now been amended (No. 37) so that the Commission may carry on the business of hail insurance and may grant policies securing to the landowner an indemnity beyond the amount for which he is already insured by the municipality.

As usual, a considerable number of minor amendments not calling for particular mention have been made to the statutes.

BERMUDA.

[*Contributed by* Hon. Reginald Gray, K.C., *Attorney-General.*]

1915.

Acts passed—38.

Admiralty.—Heretofore the Lords Commissioners of the Admiralty had not the power here to acquire compulsorily land for naval purposes, but this power is now conferred by Act No. 3, which adopts by reference the provisions of the War Department Land Act, 1904, with the requisite verbal changes, the Act itself containing only five sections and a schedule.

Currency.—Act No. 5 authorised the issue of Bermuda Government £1 notes to an amount not exceeding £20,000 (increased by Act No. 22 to £30,000). Such notes are made legal tender for all purposes, and are to be redeemable at face value as hereafter to be determined.

War Service.—By Act No. 7 provision is made for payment of separations allowances to the dependants of the members of the Contingent of the Bermuda Volunteer Rifle Corps now on active service. "Dependants" include wives and children and other members of the family whom the Governor determines to be dependants for the purposes of the Act. The Governor also fixes, within the limits of the grant, the rate of the allowances.

Aliens.—Act No. 18 fixes the fees to be paid locally on grants of Certificates of Naturalisation issued under the Statute of 4 & 5 Geo. V. c. 17.

Post Office.—Act No. 20 prohibits during the present war the sending or transmission out of the Colony of letters, etc., except through the Post Office. Consignee letters are excepted from the operation of this Act.

Currency.—By Act No. 21 British Currency £1 and 10*s.* notes issued under the statute of 4 & 5 Geo. V. c. 14 are made legal tender in Bermuda for all purposes.

Act No. 22 provides for the investment of £10,000 received from the British Government in payment for Bermuda Government Notes to the same amount, and of any further moneys hereafter authorised by the Legislature, and for the accumulation

thereof of compound interest, as collateral security for the redemption of the Bermuda Government Note issue.

Execution of Trusts.—Act No. 28 applies the provisions of the statute of 5 Geo. V. c. 13 to real or personal property in these islands which is subject to any trust to which the statute applies, and provides for the admission in evidence of deeds, etc., purporting to have been executed under delegated authority under the statute.

War Service.—Act No. 38 authorises the payment to public officers granted leave of absence for service in either of the Bermuda Active Service Contingents of a monthly allowance equivalent to half salary, and a similar allowance is made to other public officers serving otherwise in His Majesty's Military Forces.

1916.

Acts passed—28.

Evidence.—Act No. 2 authorises the administration of oaths in the manner specified in the statute of 9 Ed. VII. c. 39. The Chief Justice is empowered to prescribe a simple form of oath to be taken by children, young persons, and other persons who, in the opinion of the Court, are not fully capable of understanding the nature and purport of the usual form of oath.

War Pensions.—Act No. 6 provides for the payment of disability pensions to non-commissioned officers and men of the Bermuda Active Service Contingents who have been discharged from further service, and who, on account of wounds or other disability, are totally or partially incapable of earning a livelihood ; and also of pensions to the widows and children of men killed in action, or who have died of wounds, etc.

Criminal Law.—Act No. 7 amends the Criminal Code, adopted in 1907, preparatory to its being reprinted with the subsequent amendments.

Police.—Act No. 11 was passed to remove doubts which had arisen as to the effect and intention of a previous Act, and the enacting section, after stating the effect, concluded with the words " and this is hereby declared to be the true effect and intention of the said enactment."[1]

Debtors.—Act No. 14 makes a salutary change in the administra-

[1] Compare the statute of 41 Vict. c. 13.

tion of the Debtors' Acts by providing in substance that where, after an examination on oath of the debtor or any witnesses called by either party, an order has been made for payment of a debt by instalments, the burden of proving that the failure to pay an instalment on or within three days after the due date was owing to lack of means shall be on the debtor, and that if he fails satisfactorily to account for the non-payment of such instalment he shall be liable to be committed to prison. During the period of imprisonment the order for payment is suspended.

Marriage.—Act No. 19 was passed with the object of enabling this Colony to obtain the benefit of the provisions of the statute of 5 & 6 Geo. V. c. 40.

Motor-cars.—The Act of 1908, No. 6, prohibited the use of motor-cars in Bermuda, with the exception of road-rollers, fire-engines, stone-crushers, etc., and repealed the Act of 1905 regulating the use of motor-cars. The Act of 1916, No. 16, makes a further exemption in favour of motor-cars employed by the Corporation of Hamilton for municipal work.

III. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

1915

[*Contributed by* G. S. KNOWLES, ESQ.]

Acts passed—53.

During the year 1915, when the Session which was commenced in 1914 was continued, most of the legislation was consequential on the present state of war. Nearly all the war measures of 1914 were amended—in some cases to bring them into line with Imperial enactments and in others to facilitate administration—and many new Acts were passed.

War Legislation.—The most striking enactment of the year is the Enemy Contracts Annulment Act (No. 11) which provides that certain contracts are, or may be declared to be, null and void, and that certain other contracts may be terminated by notice in writing to the other party.

The Act declares every enemy contract made before the commencement of the war to have been null and void since that time. Such rights and obligations as relate to goods which had already been delivered or acts which had already been performed at that time are, however, preserved.

"Enemy contract" is defined as any contract—

(*a*) To which an enemy subject is a party; or

(*b*) In which an enemy subject has, in the opinion of the Attorney-General, a material interest; or

(*c*) Which is, or is likely to be, for the benefit of enemy subjects or enemy trade.

"Enemy subject" has the same meaning as in the Trading with the Enemy Act.

Any party to a contract may apply to the Attorney-General for a declaration that the contract is or is not an enemy contract, and upon the publication in the *Gazette* of the Attorney-General's declaration that the contract is or is not, as the case may be, an enemy contract, the contract shall be deemed to be, or not to be, accordingly, an enemy contract.

Every enemy contract made during the war is declared, without reservation, to be null and void. Provision is made by which either party may, by notice in writing to the other party, terminate, as regards all rights and obligations relating to any future supply or delivery under the contract, any contract the performance of which—

(*a*) Is by operation of law or by the terms of the contract suspended; or

(*b*) Is or may be by act of a party suspended; or

(*c*) Is claimed by the party against whom the notice is given to be suspended,

during or on account of the present war. A notice given before the passing of the Act is of the same effect as a notice given under the Act. No action may be brought against any party to such a contract by reason of any non-performance of the contract after the commencement of the war.

By the War Census Acts (Nos. 20 and 32) provision was made for the taking of censuses in such States, territories, or parts of the Commonwealth as the Governor-General appoints by proclamation. The proclamation is to state, also, what particulars are to be furnished

and who is to furnish them. The administration of the Act is entrusted to the Statistician.

The furnishing of the particulars required is made compulsory, the persons specified by any proclamation being required to obtain copies of any forms they are required to fill up, and to transmit them to the Statistician within the specified time. Two forms are required to be filled up, viz. a personal card by all males between eighteen and sixty, which contains personal and physical particulars, and a wealth and income card by all persons over the age of eighteen. Information contained in any form may only be divulged on the certificate of the Minister that it is in the public interest so to do, and then only to the Minister or to such other person as he directs. Offences against the Act are punishable summarily or on indictment.

The War Pensions Act (No. 48) amended the War Pensions Act 1914, and completely altered the system of administration. Under the principal Act all claims were dealt with by the Pensions Board sitting in Melbourne; each case had to be considered by the Treasurer, and no pension could be paid till the approval of the Governor-General had been obtained. The delay was, therefore, considerable, and it was deemed advisable to substitute for the Board a Commissioner, Assistant Commissioner, and Deputy Commissioner of Pensions, and to dispense with the Governor-General's approval.

The Commissioner now has the general administration of the Act; the Assistant Commissioner has such powers as are delegated by the Commissioner and as are prescribed; and in each State there is a Deputy Commissioner. In addition the Governor-General has power to appoint such Registrars of Pensions and Special Magistrates of the Commonwealth as he thinks necessary for the purposes of the Act.

The duties of a Deputy Commissioner are: (*a*) to determine whether the death or incapacity of a member of the Forces resulted from employment in warlike operations, and in the case of incapacity the nature and extent thereof; (*b*) to determine what persons are dependent on such member; (*c*) to assess the rates of pensions; and (*d*) such other duties as are prescribed.

A Registrar has power to administer oaths, and is to receive and investigate pension claims and keep such books and registers as are prescribed. An appeal lies to the Commissioner from any assess-

ment or determination of a Deputy Commissioner. Provision is made for the forfeiture of a pension during any imprisonment of a pensioner. In the case of a pensioner with dependants upon him the pension so forfeited may be paid to his dependants during his imprisonment. In the case of the incapacity of a member of the Forces it is provided that pensions may be paid as well to other dependants as to his wife or children.

"Dependants" means the wife or widow and children or ex-nuptial children of a member of the Forces, whose death or incapacity results from his employment in connection with warlike operations, and includes such other members of the family of that member of the Forces as were wholly or in part dependent upon his earnings at any time during the period of twelve months prior to his enlistment, or who would, but for such incapacity, have been so dependent, and parents who, though not dependent upon the earnings of the member at any time during the period of twelve months prior to his enlistment, are, at any time within five years after his death, without adequate means of support; and where the member—

(i) Being the grandparent of an ex-nuptial child so dependent upon his earnings; or

(ii) Being an ex-nuptial child, leaves a parent or grand-parent so dependent upon his earnings,

includes such an ex-nuptial child and parent or grand-parent respectively.

The maximum pension payable to a child both of whose parents are dead, or whose mother is dead and whose father is incapacitated, is £19 10s. per annum. The payment of pensions is to be fortnightly, the instalment of a pension covering a period of less than a fortnight is to be in proportion to the number of days in a fortnight. A pension payable to any dependant under sixteen ceases on the dependant attaining that age, or after the expiration of two years, whichever occurs the later.

Except in the case of a child, or of the wife, widow, father, mother, grandfather, or grandmother of a member of the Forces, no pension shall be payable for a period of more than two years to any dependant who, in the opinion of the Commissioner or a Deputy Commissioner, is able to earn a livelihood. A child to whom a pension has been granted, who, on attaining the age of sixteen years, is unable to earn a livelihood, may be then granted a pension.

The principal Act provided that a pension to a widow should cease on her re-marriage. The War Pensions Act 1915 extends this provision to any female dependant, a pension to whom is to cease on her marriage or re-marriage as the case may be.

The War Precautions Acts (Nos. 2 and 39) are amending Acts which substantially bring the Act of 1914 into line with the English Defence of the Realm Act.

The Patents, Trade Marks and Designs Act (No. 8) makes it an offence for any person other than a person in whose favour a patent, trade mark, or design has been suspended to use a suspended patent, trade mark, or design. The penalty is £500. It is a defence to a prosecution if the defendant satisfies the Court that a petition for revocation of the patent or for the removal of the trade mark or design from the register, as the case may be, would be successful. Prosecutions may be brought only by the Attorney-General or a person authorised by the Attorney-General.

Finance.—In addition to the Land Tax and Estate Duty the Commonwealth in 1915 levied a tax on income.

The Income Tax Acts (Nos. 41 and 48) fix the rates of taxation of (*a*) income derived from personal exertion, (*b*) income derived from property, and (*c*) the income of companies.

The tax was levied in and for the financial year beginning July 1, 1915, on an assessment made on incomes for the previous financial year. The rates of tax are as follows :—

RATE OF TAX UPON INCOME DERIVED FROM PERSONAL EXERTION.

For so much of the taxable income as does not exceed £7,600 the rate of tax per pound sterling is three pence and three-eighthundredths of one penny where the taxable value is one pound sterling, and increases uniformly with each increase of one pound sterling of the taxable income by three-eight-hundredths of one penny.

For every pound sterling of taxable income in excess of £7,600 the rate of tax is sixty pence.

The rate of tax for so much of the taxable income as does not exceed £7,600 may be calculated from the following formula :

R = rate of tax in pence per pound sterling.
I = taxable income in pounds sterling.

$$R = (3 + \frac{3}{800} \text{ I}) \text{ pence.}$$

RATE OF TAX UPON INCOME DERIVED FROM PROPERTY.

(*a*) For income of a taxable value not exceeding £546 the rate of tax may be calculated from the following formula :

R = rate of tax in pence per pound sterling.
I = taxable income in pounds sterling.

$$R = (3 + \frac{\text{I}}{181{\cdot}07}) \text{ pence.}$$

(*b*) For income of a taxable value exceeding £546 but not exceeding £2,000 the rate of tax may be calculated in the following manner :

The rate of the tax increases continuously with the increase of the taxable value of the income in a curve of the second degree in such a manner that the increment of tax per pound increase of taxable income is :

At a taxable income of	£546	11·713 pence
,, ,, ,, ,, ,,	£600	12·768 ,,
,, ,, ,, ,, ,,	£700	14·672 ,,
,, ,, ,, ,, ,,	£800	16·512 ,,
,, ,, ,, ,, ,,	£900	18·288 ,,
,, ,, ,, ,, ,,	£1,000	20·000 ,,
,, ,, ,, ,, ,,	£1,500	27·600 ,,
,, ,, ,, ,, ,,	£2,000	33·600 ,,

(*c*) For income of a taxable value exceeding £2,000 the rate of tax is calculated in the following manner :

For so much of taxable value as does not exceed £6,500, the rate of tax increases continuously with the increase of the taxable value of the income in a curve of the third degree in such a manner that the increment of tax per pound increase of taxable income is :

At a taxable income of	£2,000	33·600 pence
,, ,, ,, ,, ,,	£2,500	40·000 ,,
,, ,, ,, ,, ,,	£3,000	45·300 ,,
,, ,, ,, ,, ,,	£3·500	49·600 ,,
,, ,, ,, ,, ,,	£4,000	53·000 ,,
,, ,, ,, ,, ,,	£4,500	55·600 ,,
,, ,, ,, ,, ,,	£5,000	57·500 ,,
,, ,, ,, ,, ,,	£5,500	58·800 ,,
,, ,, ,, ,, ,,	£6,000	59·600 ,,
,, ,, ,, ,, ,,	£6,500	60·000 ,,

For every pound sterling of taxable income in excess of £6,500 the rate of tax is sixty pence.

Rate of Tax on the Income of a Company.

For every pound sterling of the taxable income of a company the rate of tax is one shilling and sixpence.

Where the income of a taxpayer consists of income from personal exertion and income from property the rates of tax are :

(*a*) In respect of the income from personal exertion—the rate that would have been applicable if the total taxable income of the taxpayer had been derived exclusively from personal exertion ; and

(*b*) In respect of the income from property—the rate that would have been applicable if the total taxable income of the taxpayer had been derived from property.

The Income Tax Assessment Acts (Nos. 34 and 47) are the machinery Acts in connection with the assessment and levy of income tax. They are, to a large extent, based on the Income Tax

Assessment Acts of the States. Thus the provisions relating to the definition of income, exemptions, deductions and special deductions, deductions not to be allowed, deduction of losses from profits, and the other provisions which are common to most Acts on the same subject, follow very closely the provisions found in the State Acts. The general administration of the Act is vested in the Commissioner of Taxation, assisted by such Deputy Commissioners as are required.

Persons on active service are exempt from payment of the tax on income derived from personal exertion and earned before the commencement of the Act or during the war. Amongst the deductions are included gifts exceeding £20 each to charitable institutions in Australia and contributions exceeding £5 in the aggregate in respect of each object of contribution made during the war to any fund established in the King's Dominions or an allied country for any purpose connected with the war.

Special deductions are (*a*) in respect of income derived from personal exertion—

(i) If the income does not exceed £500—£156;

(ii) If the income exceeds £500—£156 less £3 for every £10 by which the income exceeds £500;

(*b*) In respect of the income derived from property—£156 less £2 for every £5 by which the income exceeds £156; and (*c*) £13 for each child under the age of sixteen.

Where the total deduction under (*a*) and (*b*) is more than £156, the deduction shall only be £156 apportioned between the two classes of income in the proportion they bear to each other.

The Act contains the usual provisions for an appeal against an assessment to the High Court, a Supreme Court, or a District or County Court.

The War Loan Act (No. 1), the War Loan Act (No. 2), the Loan Act, and the War Loan Act (No. 3) (Nos. 21, 22, 23, and 50 respectively) authorised the raising and expending of sums amounting in the aggregate to £46,000,000.

By the War Loan Acts (No. 1) and (No. 3) and the Loan Act the moneys were authorised to be borrowed under the provisions of the Commonwealth Inscribed Stock Act 1911–1915 and of any Act authorising the issue of Treasury Bills. The War Loan Act (No. 2) authorised the borrowing from the United Kingdom. The amounts borrowed under the War Loan Acts are to be issued and applied for

war purposes; that under the Loan Act for the construction of the Kalgoorlie to Port Augusta Railway.

The Treasury Bills Act, 1914, gave the Governor-General power to authorise the Treasurer to make out and issue Treasury Bills for raising by way of loan any money authority to borrow which is granted by any Act. The Treasury Bills Act 1915 (No. 25) gives the Treasurer power, in cases where he is authorised to issue Treasury Bills in order to raise by way of loan any money, to borrow the money or any part of the money from the Australian Notes Account without making out or issuing Treasury Bills for the amount.

The Commonwealth Inscribed Stock Act (No. 26) provides that the Governor-General may authorise the Treasurer to make out and issue Treasury Bonds for raising by way of loan any money, authority to borrow which is granted by any Act.

The provisions of the Treasury Bills Act are to apply to Treasury Bonds.

Stock and Treasury Bonds are interchangeable on such conditions as are prescribed.

It is also provided that Stock Certificates, Stock Certificates to bearer, Scrip Certificates to bearer, Treasury Bonds and Coupons, and transfers of Stock and Treasury Bonds shall not be liable to stamp duty or any other tax under any Commonwealth or State law.

The interest derived from Stock or Treasury Bonds is not liable to Commonwealth or State income tax. Stock may be accepted at par and Treasury Bonds at their face value, in payment of estate duty payable under any Commonwealth law.

The Sugar Purchase Act (No. 31) authorises the Treasurer to borrow, from the Commonwealth Bank, moneys for the purchase of sugar by the Commonwealth and the payment of customs duty on sugar imported into the Commonwealth.

The Freight Arrangements Act (No. 40) authorises the Treasurer to borrow, from the Commonwealth Bank, money for the payment of moneys in respect of arrangements for freight on Australian produce. The Act is to continue in operation during the wheat season, but thereafter shall not continue in force after the expiration of six months from the end of the war.

Commerce.—The Iron Bounty Act extends the period within which bounty on the production of iron will be paid to December 31, 1916, but provides that bounty will not be paid on any pig iron

manufactured, after the commencement of the Act, for other than foundry purposes.

The River Murray Waters Act (No. 46) ratifies on behalf of the Commonwealth an agreement made between the Commonwealth, New South Wales, Victoria, and South Australia on April 7, 1914, with a view to the economical use of the waters of the river Murray and its tributaries for irrigation and navigation, and to the reconciling of the interests of the Commonwealth and the riparian States, limits the liability of the Commonwealth under the Agreement to £1,000,000, and makes such other provisions as are necessary in pursuance of the Agreement.

Conciliation and Arbitration.—Under the Commonwealth Conciliation and Arbitration Act 1904–14, in order that an association might be registered as an association, it had to be an association of employees in the same industry. It could, however, have as members persons who though not employees in the industry were officers of the association. By the Commonwealth Conciliation and Arbitration Act, 1915 (No. 35 of 1915), it is, however, provided that an association of not less than one hundred employees engaged in any industrial pursuit or pursuits may be registered as an organisation. The necessity for all the employees to be engaged in the same industry is thus dispensed with. The Act validates the registration of existing organisations.

Public Service.—The Commonwealth Public Service Act (No. 37) makes many minor amendments of the principal Act.

Provision is made for preference to be given, in the making of appointments from among persons who have successfully passed the prescribed entrance examination, to persons who have served in the Expeditionary Forces. As regards officers of the public service who have enlisted or been appointed to the Expeditionary Forces, they are to be granted leave for the period during which they are serving with such Forces.

The Executive.—The Ministers of State Act (No. 18) increased the number of Ministers of State from seven to eight. The new Minister is the Minister for the Navy.

Lighthouses.—The Lighthouse Act (No. 17) enables the Commonwealth to acquire compulsorily from a State any lighthouse or marine mark and any lighthouse tender, store, vessel, stores or equipment, or other property used in connection with the lighthouse or marine

mark. The provisions of the Lands Acquisition Act, 1906, in relation to the acquisition of land are to apply to such acquisition and the determination of any compensation payable.

Quarantine.—The fact that there was a possibility of Yellow Fever being introduced into Australia by way of vessels arriving in Australia via the Panama Canal necessitated immediate amendment of the Quarantine Act 1908–12 in order to make adequate provision for dealing with such vessels. The Act as it stood did not sufficiently provide for dealing with mosquitoes on such vessels or render the control over such vessels all that was desired.

The Quarantine Act, 1915 (No. 42 of 1915), was passed therefore to strengthen the powers conferred by the Act and to make provision for the new circumstances. Several minor amendments considered advisable for the smoother working of the Act were also made.

Judiciary.—The Judiciary Act (No. 4) confers original jurisdiction on the High Court in trials of indictable offences against the laws of the Commonwealth. The Attorney-General may file an indictment for any indictable offence against the laws of the Comonwealth without examination or commitment for trial.

The High Court Procedure Act (No. 5) provides for the trial by the High Court of indictable offences by judge and jury and for the qualifications of jurors.

Territories.—The Jervis Bay Territory Acceptance Act (No. 19) ratifies the agreement between the Commonwealth and New South Wales for the surrender to and acceptance by the Commonwealth of territory at Jervis Bay in New South Wales as a site for the Australian Naval College.

1916

Public Acts passed—41.

The greater part of the legislation in 1916 was in relation to, or the outcome of, the war, and the remainder was mainly directed towards the facilities of the administration of existing Acts and Departmental administration generally.

War Legislation.—The war measures comprised the War Precautions Act, the Australian Soldiers' Repatriation Fund Act, the Patents Act (Partial Suspension) Act, the Trading with the Enemy Act, the War Census Act, the War Pensions Act, the Military

Service Referendum Act, the Daylight Saving Act, and the Unlawful Associations Act. Of these, the War Precautions Act, the Trading with the Enemy Act, the War Census Act, and the War Pensions Act are amending Acts.

The War Precautions Act (No. 3) more clearly defines the regulation power in connection with the action to be taken in regard to the property, businesses, and civil rights and obligations of enemy aliens, and as regards the conditions of disposal or requisitioning of any property or goods. Provision is made, also, for the access of approved persons to factories and workshops in which warlike stores and equipment are manufactured.

The Australian Soldiers' Repatriation Fund Act (No. 7) provided for the vesting of the Fund in trustees who were appointed by the Act. The trustees were charged with the control of the Fund, and were required to allocate such sums as they might determine to the various State War Councils. The State War Councils, in their turn, were responsible for the application of the sums for the assistance and benefit of Australian soldiers and their dependants. The term "Australian soldier" had the same meaning as in the War Pensions Act 1914–15.

The Patents Act (Partial Suspension) Act (No. 13) makes similar provision, as regards Australia, as the Patents and Designs Act (Partial Suspension) Act, 1915, of the United Kingdom.

In order to bring Commonwealth legislation on the same subject into line with Imperial legislation the Trading with the Enemy Act (No. 20 of 1916) was passed. This Act contains substantially the same provisions as the Imperial Trading with the Enemy Amendment Acts 1914, 1915, 1916.

The War Census Acts, 1915, provided for the filling up of war census forms by persons specified in proclamations under the Acts. The War Census Act, 1915 (No. 21), provides that, in prosecutions for failure to furnish completed forms, the onus is on the defendant to prove that he was not liable, or did not fail, to furnish the form.

The War Pensions Act (No. 25) not only increases the scale of pensions to incapacitated Australian soldiers and the children of these soldiers, but also renders less stringent certain provisions of the War Pensions Act 1914–15. Under the 1916 Act the widowed mother of an unmarried son is placed in the same position as the

widow of a soldier; parents are entitled to a pension, if, at any time after the death of the soldier, they are without adequate means of support; a claim for a pension not made within the prescribed period may be considered, if the reasons for delay are adequate; and a female dependant may continue to receive a pension for two years after her marriage or remarriage.

The rates of pensions payable to a widow on the death of a member of the Forces, or to a member upon total incapacity, were increased in accordance with the following scale:

Column One.	Column Two.	Column Three.
Rate of pay of the member per day.	Pension payable for widow on death of member.	Pension payable to member upon total incapacity.
s. *d.*	£ *s.* *d.*	£ *s.* *d.*
6 0 and under	2 0 0 per fortnight	3 0 0 per fortnight
7 0	2 3 0 ,, ,,	3 2 0 ,, ,,
9 0	2 9 0 ,, ,,	3 6 0 ,, ,,
10 0	2 12 3 ,, ,,	3 8 0 ,, ,,
10 6	2 13 9 ,, ,,	3 9 0 ,, ,,
11 6	2 16 0 ,, ,,	3 11 0 ,, ,,
12 0	2 17 3 ,, ,,	3 12 0 ,, ,,
13 0	2 19 6 ,, ,,	3 14 0 ,,
17 6	3 10 0 ,, ,,	4 0 0 ,, ,,
22 6	3 17 6 ,, ,,	4 5 0 ,, ,,
30 0	4 9 0 ,, ,,	4 15 0 ,, ,,
37 6	5 0 9 ,, ,,	5 5 0 ,, ,,
45 0	5 12 3 ,, ,,	5 15 0 ,, ,,
50 0 and upwards	6 0 0 ,, ,,	6 0 0 ,, ,,

In the case of partial incapacity from certain specific injuries, provision is made for pensions at rates bearing specified relations to the rates for total incapacity.

In addition to increasing the rates of pensions payable to soldiers, the Act also provides that no such pension shall be reduced within six months of the commencement of the pension. Further, if a soldier is unmarried or a widower or his wife is a permanent invalid and he is so incapacitated that he requires the constant services of an attendant, his pension may be increased by not more than £1 per fortnight.

The *de facto* wife of a soldier is now provided for, and is entitled to receive a similar pension to the wife or widow.

The pension payable to children has been increased, and is now 20s. per fortnight for the first child, 15s. for the second, and 10s.

for each subsequent child. Similarly, the maximum rate payable to a child both of whose parents are dead is now:

(i) Up to ten years of age, £1 per fortnight;

(ii) From ten to fourteen years of age, 25s. per fortnight;

(iii) From fourteen to sixteen years of age, 30s. per fortnight.

Towards the end of the year the question of maintaining a sufficient stream of reinforcements to the Australian Imperial Force became very grave, and it was decided to ascertain the will of the people of Australia with regard to the institution of compulsory enlistment for service abroad.

The Military Service Referendum Act (No. 27) provided, therefore, for the submission to a referendum of the following question:

> Are you in favour of the Government having, in this grave emergency, the same compulsory powers over citizens in regard to requiring their military service, for the term of this war, outside the Commonwealth, as it now has in regard to military service within the Commonwealth?

Provision was made in s. 9 of the Act for the disqualification of persons born in enemy countries, and interned persons, and the presiding officer was authorised to put to persons whom he had reason to believe were born in an enemy country the following question:

> Are you a naturalised British subject who was born in any country which forms part of the territory of any country with which Great Britain is now at war?

If the question were not answered fully, or the reply showed the person was not entitled to vote, his claim was rejected. If the question were answered in the negative, the ballot-paper was endorsed with the words "Section 9."

The words "Section 9" were also endorsed on ballot-papers issued to any person whom the presiding officer had reason to believe was the son or daughter of a person born in an enemy country. Endorsed ballot-papers were placed in envelopes and withheld from scrutiny until the loyalty or disloyalty of the persons concerned was determined by the prescribed tribunal. If the tribunal determined that a person was disloyal, his ballot-paper was rejected.

Provision was made, also, for taking the votes of members of the Forces actually serving abroad, or returned from such service, and

of the members of the crews of transports. Members of the Forces and of transport crews were entitled to vote whether enrolled or not, provided they were eligible to be enrolled. Persons living in a Territory under the authority of the Commonwealth were entitled to vote, if their names were on the electoral list prepared for the purpose.

The Daylight Saving Act (No. 40) provided that Australian clock time—the time to be observed in any State or Territory being part of the Commonwealth as prescribed by the Act—should be one hour in advance of standard time in that State or Territory.

The Act came into operation on January 1, 1917, and continued in force till the last Sunday in March. Thereafter it was to be in force from the last Sunday in September till the last Sunday in March. Where any expression of time occurs in any Act, State Act, etc., that time was held to be Australian clock time. For the purposes of astronomy, meteorology, or navigation, however, the use of standard time was not affected.

The Unlawful Associations Act (No. 41), as the preamble recites, aims at the suppression of the practices of the Industrial Workers of the World.

The Association known as the Industrial Workers of the World, and any association which by its constitution or propaganda incites to the taking of human life or the destruction of property are declared to be unlawful associations.

With the object of protecting life and property, the Act provides that any person advocating or inciting to the taking of human life, or the destruction of property, is liable to six months' imprisonment, and a member of an unlawful association who is active in impeding warlike preparations is liable to the same penalty. In addition, if the person guilty of any of those offences is not a natural-born British subject born in Australia, he may be deported from Australia.

The publication or printing of any writing inciting to crime is also made an offence.

Financial.—This year saw new, as well as additional, taxation imposed by the Commonwealth.

The Income Tax Assessment Act, the Land Tax Assessment Act, and the Estate Duty Assessment Act (Nos. 31, 33, and 29 respectively) are amending Acts, and provide for the appointment of an Assistant Commissioner of Taxation. The Income Tax Assessment Act

(No. 2) (No. 39) is also an amending Act. Its principal effect is to render the Act clearer, and to avoid the infliction of hardship which had occurred previously. Provision is made for the exemption of the income of trust funds established for public charitable purposes, and for the extension of the exemption of income from War Loan Bonds to that portion of dividends distributed which consists of such income.

A company is now required to pay income tax on the income distributed to absentee members and shareholders and on the interest paid by the company to absentees on debentures and money lodged at interest with the company. War-time profits tax payable in respect of any part of the income is allowable as a deduction, and the amount deductible in respect of children has been increased from £13 to £26 for each child.

Single persons without dependants are now required to furnish a return, if their income amounts to £100 or upwards, and the special deduction allowed in their case is only £100 instead of £156, and diminishes at the rate of £1 for every £4 by which the income exceeds £100.

The Income Tax Act (No. 37 of 1916) imposed taxes on income derived from personal exertion and property at the same rates as those levied in 1915, but there was payable an additional 25 per cent. on the amount of tax calculated. This additional tax did not apply to the income of companies, but the rate of that tax was altered. In the 1915 Act the rate was 1*s.* 6*d.* for every pound sterling of the taxable income of the company. By the 1916 Act the rate of the tax for every pound sterling of undistributed income is 1*s.* 10½*d.* for every pound sterling distributed to absentee members, shareholders, or stockholders, or of interest paid by the company to any absentee in respect of debentures in the company, or money lodged at interest with the company, the rate is 6*d.*

A minimum tax of one pound was imposed on single persons without dependants, and not absentees, whose gross income was not less than £100.

The Entertainments Tax Assessment Act (No. 36) is the machinery Act in connection with the imposition of Entertainments Tax.

The tax is chargeable on the price of admission, and, where the payment is subject to tax, admission to the entertainment is only permitted—(*a*) with a ticket stamped with the amount of the tax, or

(*b*) through a barrier which registers the number of admissions, unless the proprietor of the entertainment makes other arrangements with the Commissioner of Taxation for payment of the tax.

Where payment for admission is made by way of a lump sum paid as a subscription to a club, etc., the tax is chargeable on the whole of the lump sum unless part of the sum represents payment for other privileges, rights, or purposes, when the tax shall be charged on a portion only of the lump sum.

The tax is not chargeable where—(*a*) the whole of the takings are devoted to philanthropic, religious, or charitable purposes; (*b*) the entertainment is of a wholly educational nature; (*c*) the entertainment is intended only for the amusement of children and the charge is not more than sixpence for each person; and (*d*) the entertainment is provided for partly educational or partly scientific purposes by a society or institution not conducted for profit.

Provision is made for the punishment of evasion of payment of tax, and penalties are provided to prevent forgery of stamps, etc., and other fraudulent acts done with the object of defeating the provisions of the Act.

The Entertainments Tax Act (No. 38 of 1916) imposes entertainments tax at the following rates:

Payment for Admission (excluding the amount of tax).	Rate of Tax
Exceeding 6*d*. and not exceeding 1*s*. .	1*d*.
Exceeding 1*s*.	1*d*. for the first shilling and one half-penny for every sixpence or part of sixpence by which the payment exceeds one shilling.

The Invalid and Old-age Pensions Act (No. 32) amends the Invalid and Old-age Pensions Act 1908–1912, and increases the rate of pension from 10*s*. to 12*s*. 6*d*. per week.

It also provides for the payment of a pension of 2*s*. per week in cases where the pensioner is not fit to receive the full pension, and for suspension of payment of the remainder until the pensioner has become the inmate of a benevolent asylum. Also where a pensioner receives board and lodging, the value of the board and lodging may be taken, in computing the pensioner's income, to be as much as 7*s*. 6*d*. instead of 5*s*. as formerly.

Electoral.—The Representation Act, 1905, required the appointment of an Enumeration Day in 1916 for the purpose of taking a

census of the people of the Commonwealth to determine the number of members of House of Representatives for the several States. Owing to the war the taking of a census would not have been expedient, and accordingly the Representation Act (No. 15 of 1916) provided that an Enumeration Day should not be appointed in 1916.

Lands Acquisition.—The Lands Acquisition Act (No. 12) amends the Lands Acquisition Act 1906 by providing for the vesting in Commonwealth Authorities of lands acquired by the Commonwealth under the Act.

Public Service.—To facilitate administration in the Customs and Postal Departments, it was deemed desirable, for purposes of administration, to attach portions of certain States to adjoining States. To effect this the Commonwealth Public Service Act, Customs Act, and Post and Telegraph Act (Nos. 8, 10, and 14 respectively) were passed accordingly.

The Commonwealth Public Service (Acting Commissioner) Act (No. 9) provides for the appointment of an Acting Commissioner.

The Solicitor-General Act (No. 28) provides for the appointment of a Solicitor-General for the Commonwealth, who has such powers as are conferred on him by any Act and as are delegated to him by the Attorney-General.

Interpretation and Statutory Rules.—The Acts Interpretation Act (No. 4) amends the Acts Interpretation Acts 1901 and 1904. A new section is inserted in the 1901 Act providing that references in an Act to any other Act is to be read as a reference to that other Act as amended, and the provisions, including a new provision inserted by the 1916 Act, in the 1904 Act relating to the notification of making of regulations and the effect of the repeal of regulations, are in future to apply to all Commonwealth Acts whether passed before or after the commencement of the 1904 Act. The new provision deals with the repeal of regulations which is not to affect any right, privilege, obligation, or liability acquired, accrued, or incurred under the repealed regulations.

The Rules Publication Act (No. 16) effects a great saving in time and printing by repealing the provisions of the 1903 Act dealing with provisional regulations and the making of permanent regulations after sixty days' notification of intention to do so. All regulations may now be made forthwith without any notification of intention to make whatever.

2. NEW SOUTH WALES.

[*Contributed by* J. V. MACKEN, ESQ. B.A., LL.B.]

Acts passed—83.

In spite of the war a considerable amount of important domestic legislation was passed this year. The most important Acts in matter of principle were the Valuation of Land Act, the Superannuation Act, the Testator's Family Maintenance and Guardianship of Infants Act, and the Rural Tenants Improvements Act.

Valuation of Land.—No. 2 provides for the valuation of land to which the Act shall apply. S. 5 defines the improved value of land as the capital sum which the fee simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a *bona fide* seller would require.

S. 6 defines the unimproved value as the improved value less the value of any improvements on the land.

S. 7 provides that the assessed annual value shall be nine-tenths of the average annual value, but shall not be less than 5 per cent. of the improved value.

S. 8 provides for the appointment of a valuer-general to hold office for seven years and to administer the Act.

S. 9 provides for the appointment of official valuers. Districts are to be assigned to the official valuers (s. 10). The valuer general shall as soon as practicable make a valuation of the unimproved, improved, and assessed annual value of all lands in the State except Crown Lands. The valuation may include the unimproved, improved, and assessed annual values of all estates and interests including the interests of lessors and lessees (s. 14). Forms are to be sent out to all the landowners in each district containing questions relating to the area, portions, situation, quality, and use of the land owned, the improvements thereon, and the tenancies to which it may be subject. Valuation rolls are then to be prepared for each district (s. 16). New valuations may be made at any time by the valuer-general or on the application of the owner (ss. 19–20). The interests of lessors and lessees are dealt with by ss. 21–5. S. 23 explains how the value of the lessee's interest is to be determined.

The valuer-general is to give notice to the owner of any interest in the land of all valuation made in respect of such land. The

owner, or any public taxing or rating authority, and any State or Government Department, may object to the valuation. Objections to valuations in case of dispute are to be heard by the valuation Court (ss. 29–36).

The valuer-general is to furnish certain rating and taxing bodies with valuation lists giving particulars of the ownership, occupation, value, title, and description of all land within the respective areas of such bodies (s. 48). The values given in such valuation lists shall be used as a basis for computing all rates, taxes, and duties (ss. 58–63).

The values given in the valuation rolls are also to be used in computing stamp duties and death duties. They are also to be used for the purposes of mortgages by the Government Savings Bank or any other public office or department, and also for the purposes of the Fire Brigade Act, 1909. The valuation in the roll is to be taken as the value of land resumed under various Acts, but the owner is not debarred from claiming compensation for forced sale or disturbance of business, or for any special value the land may have to the owner.

S. 76 provides that on application in writing and payment of the prescribed fee the valuer-general shall supply to any person a certified copy of any entry in a valuation roll. Such certificate shall be evidence in all proceedings of the matters and things stated therein. Any trustee, solicitor, or agent, except where expressly prohibited, may use the certificate of valuation for the purposes of investment.

The Eight Hours Act.—No. 11 provides that no workman or employee shall work more than eight hours a day. In the case of the coal-mining industry the eight hours includes the time taken in going to and from work (s. 4 (*a*)). The working time of employees in underground occupations shall not exceed six hours during any shift, if for four hours of such shift the temperature has exceeded 81° Fahrenheit.

Local Taxation.—The Sydney Corporation Amendment Act (No. 12) effects an important alteration in the method of municipal taxation, substituting for separate rates on the improved capital value and the unimproved capital value a general rate not exceeding sixpence in the pound on the unimproved capital value. The objects of the Act were to simplify the method of rating, to encourage

building, and to throw on vacant blocks their share of the rates which they had almost entirely escaped under the old system.

S. 8 imposes a charge on private pipes, wires, cables, or rails in, under, or over any public place.

Naturalised Subjects' Franchise.—No. 14 is a war measure limited to the duration of the war and six months after. S. 1 (2) defines a naturalised British subject of enemy origin as a naturalised male or female British subject, who at the time of his or her naturalisation was a subject of a country with which the British Empire is at war. S. 2 takes away the right of such persons of sitting and voting in the Legislative Assembly, the Legislative Council, the Municipal Council of Sydney, or the council of any municipality or shire constituted under the Local Government Acts, or of acting as a justice of the peace, a coroner, a member of a licensing bench, or a juror, or of obtaining a licence under the Liquor Act or a renewal of a licence. S. 3 removes his or her name from the Parliamentary and Municipal Electoral Rolls and any referendum roll.

S. 4 (1) takes away the right to vote. Sub.-s. (11) imposes a penalty of £100 for voting.

S. 5 directs the presiding officer at any poll to put certain questions to any person claiming to vote who bears a name suggesting that he is an alien of enemy origin.

Shop Hours.—The Sunday Trading (Refreshment Rooms) Act (No. 19) further reduces the hours during which pastry-cooks, tea-rooms, fruiterers, confectioners, restaurants, and fish-shops may keep open on Sundays.

Land Settlement for Soldiers.—The Returned Soldiers Settlement Act (No. 21) makes provision for the sale or lease of Crown lands to returned soldiers. The Minister may remit or postpone the payment of rent, and may postpone the payment of any instalment of the purchase money (s. 8). Land sold or leased under this Act shall not be transferred without the Minister's consent, and except where the Minister is satisfied that the settler is compelled by sickness of himself or family, financial difficulties or incapacity, it shall not be transferable until after five years.

State Provident Fund.—The Superannuation Act (No. 28) provides for the establishment of a State provident fund for persons employed by the State or certain quasi-public bodies, to be built up by contributions from employers and employees. The contribu-

tions are calculated to yield as a minimum a pension of £52 per annum to the employee who, after ten years' service at least, reaches the age of sixty (ss. 21, 27). The contributions vary with the wages, the sex, and the age of the employee at the date at which he commences to contribute. The whole scheme of the Act is to effect the compulsory insurance of the employee by himself and his employer in order to secure an annuity on his attaining sixty. In addition, any employee who has served for at least ten years may be retired on full pension if he breaks down through no fault of his own. If he breaks down through his own fault his pension is only to be the actuarial equivalent of his contributions up to the date of his retirement (ss. 22, 29). If the employee is dismissed on the ground that his employment is not necessary, or that his position is not to be refilled, or that his work is finished, or a reduction in employees is necessary, and he has served ten years, he is entitled to retrenchment benefits. He can take a lump sum equal to twice the amount of his contributions or a pension which shall be the actuarial equivalent of his contributions. If he again obtains employment, and is in receipt of a pension, his pension continues, and he commences to contribute again. If, however, he has not been in service for ten years, or if he has been dismissed or has resigned, he is only entitled to a refund of his contributions (ss. 23, 24, 25, 37, 38).

S. 30 introduces an important extension of superannuation benefits in providing for the payment of pensions to widows and orphans of employees. On the death of a contributor before retirement, his widow receives half the pension for which he was contributing and £13 per annum for each child under sixteen (s. 30).

On the death of a pensioner the widow receives half his pension and £13 per annum for each child under sixteen. In each case a widow's rights cease on remarriage (s. 31). The personal representative of a woman contributor who dies before retirement is to receive the amount of her contributions (s. 32). On the death of a male contributor or pensioner, if his wife be dead or divorced, a pension of £13 per annum shall be paid to the guardian of such of his children who are under sixteen and dependent on him (s. 33). A *casus omissus* apparently is the case of a female pensioner, who dies leaving children under sixteen.

Ss. 34 and 35 deal with the cases of employees who have served ten years, and who are over sixty at date of the passing of the Act,

or who have been retired since January 1914. Such employees are to receive pensions up to £104 per annum. Ss. 39–42 deal with cases of desertion, imprisonment, and insanity of pensioners. S. 47 provides that where a pensioner marries after retirement his widow gets no pension.

Ss. 53–59 deal with the rights of employees who are entitled to benefits under the old Civil Service Acts. Such rights may be commuted for their actuarial value under the present Act, and the difference between his rights under the Civil Service Acts and this Act shall be made up by contributions to the Fund in the ordinary way. Or the employee may elect to contribute under this Act for a pension for his widow or children under sixteen or both. Employees under the Civil Service Acts who are over sixty at or after the passing of this Act, and have served at least ten years, and are entitled to benefits under the Civil Service Acts, shall have their pensions made up to the full amount payable under this Act without contribution. The same provision applies to employees having rights who have served for at least ten years, and who were over sixty, and who have been retired since January 1914. Insurance policies held by contributors may be continued or discontinued, or after the expiration of two years from the commencement of this Act may be transferred to a nominee of the Board. The Board will continue to pay the premiums under the policy, and on maturity will hand over any sums received to the employee or his personal representative less the amount paid in premiums.

Employees may pay money into the Fund as into a bank. Money paid in shall bear interest, and may be withdrawn at any time. The Board may lend money to an employee to enable him to acquire a home, or for any other purpose of which the Board may approve (s. 69).

Pensions under this Act shall not be assigned or charged or passed by operation of law to any person other than the pensioner or beneficiary and any moneys payable out of the fund on the death of an employee or beneficiary shall not be assets for the payment of his debts.

The Act comes into operation on the first day of the financial half-year next after the expiration of a period of six months after the proclamation of peace.

Testator's Family Maintenance.—The Testator's Family Main-

tenance and Guardianship of Infants Act (No. 41) aims at assuring to the widow or widower and family of a testator an adequate maintenance from his estate. Where the widow, husband, and children of a testator dying since October 7, 1915, are left without adequate provision for their proper maintenance, education, or advancement in life, they may apply to the Court in its equitable jurisdiction. The Court may, if it thinks fit, order that proper provision be made for the maintenance, education, and advancement of such widow, widower, or children out of the estate of the testator. The application must be made within twelve months, except in cases where the testator died before the passing of the Act, in which case the application must be made within three months.

Ss. 13–21 make provision for the guardianship of infants. By s. 13 the mother is appointed guardian of an infant after the father's death, and notwithstanding any appointment made by him. She may be removed by the Court, or a joint guardian may be appointed along with her (s. 14). The mother may appoint a guardian to act after the death of herself and the father of such infant, and may appoint a person to act as guardian after the death jointly with the father, but in the latter case the appointment must be confirmed by the Court.

Constitution.—The Constitution (Public Service) Amendment Act (No. 45) provides that persons holding an office of profit in the public service of New South Wales may be nominated and elected to the Legislative Assembly, but on election are to resign from the public service forthwith.

Education.—The Public Instruction (Amendment) Act (No. 51) aims at enforcing regular attendance at school by rendering the parent liable to a fine, by introducing a register of attendances, and by committing habitual truants to an institution.

Schools other than State schools, for children between seven and fourteen, may apply to the Minister of Public Instruction for registration. Registration, if granted, shall be provisional only in the first case for a period of six months. An inspection will be made during this period, and if the school is reported efficient it will be registered as a certified school. Certificates may be cancelled if the school becomes inefficient.

Forestry.—The Forestry Act (No. 55) makes provision for the setting aside of Crown lands and lands resumed under the Act as

State forests and timber reserves. The Act is to be administered by a Commission of three, who have wide powers of dealing with the timber in the forests and reserves, of training forest officers, conducting research work, and collecting statistics.

Tenants' Improvements.—The Rural Tenants' Improvements Act (No. 57) provides that where any rural tenant has made the improvements mentioned in the Schedule to the Act on his farm, he shall be entitled to be compensated for them on the determination of his tenancy. For some of the improvements the previous consent of the landlord is necessary, for others notice to the landlord is sufficient. Disputed claims for compensation are to be referred to the Land Appeal Court; but the tenant must give notice of his claim before the determination of his tenancy. The Act does not apply to improvements made within one year before the determination of the tenancy. The Act applies to mortgagees entering into possession of land held by a tenant of the mortgagee.

The tenant also has the right to remove fixtures and buildings, including machinery and fencing, on giving one month's notice of his intention to remove them.

Liquor Licensing.—As a result of the Liquor Referendum Act, 1916 all hotels and licensed premises had to close at six o'clock instead of eleven as before. Bar takings were considerably reduced in consequence, and the Liquor (Amendment) Act (No. 68) was passed to apportion the loss in profits between the hotel keeper and his landlord. The lessee of any licensed premises who has failed to come to an agreement with his lessor as to an abatement of his rent may apply to one of the Courts constituted under this Act for an order abating his rent. A mortgagee and a purchaser of licensed premises may likewise apply to a Court for an order postponing the payment of the principal or the payment of instalments respectively.

The Act suspends the taking of the Local Option vote for a period of twelve months after the commencement of the Act (s. 18).

Workmen's Compensation. — Workman's Compensation Act (No. 71) repeals the Employers' Liability Act, 1897, and the Workman's Compensation Act, 1910, which provided alternate remedies in many cases and is practically a consolidation of the law of compensation. To some extent, however, it alters and extends the law.

(1) It extends the definition of " workman," which now includes

any person in receipt of less than £312 per year who is in the service of an employer, but does not include casual workers.

(2) It increases the compensation payable to a workman.

(3) The Act applies to a seaman employed on a ship whose first port of clearance and whose destination are in New South Wales.

(4) The compensation payable under the Act may be claimed by workmen who have contracted certain industrial diseases in the course of their employment.

The present Act is practically a copy of the English Workmen's Compensation Act.

3. SOUTH AUSTRALIA.

[*Contributed by* A. J. HANNAN, ESQ., M.A., LL.B.]

War Measures: Aid to Returned Soldiers.—The principal object of the Advances for Homes Act Amendment (No. 1246) is to provide a means whereby returned soldiers who have no funds to purchase a home for themselves may acquire a home by purchase from the Government by instalments extending over a period of forty-two years. In the case of a soldier who has died on active service, his widow and his parents have the same privileges under the Act as he would have had, had he lived to return to South Australia.

Under the Act an applicant desiring to secure the benefit of it may select a block of land anywhere in the State, and the Board of Trustees of the State Bank may then, if it considers that the land selected is suitable as a site for a dwelling-house, and that the purchase price is reasonable, purchase such land at a price not exceeding £100. The returned soldier or dependant of a returned soldier applying for assistance must then enter into an agreement, agreeing to purchase the fee simple of such land from the Board by equal monthly instalments extending over a period of ten years.

Upon entering into this agreement the returned soldier or dependant becomes qualified to apply to the Board for an advance to enable him to erect a dwelling-house on the land as a home for himself and his family. The maximum amount which may be advanced by the Board (including the amount advanced for the purchase of the land) is not to exceed £600.

The Returned Soldiers Settlement Act Amendment Act (No.

1264) provides for minor amendments of the Returned Soldiers Settlement Act, 1915. Provision is made that advances to returned soldiers to whom blocks have been allotted under that Act shall be made on the recommendation of a Returned Soldiers Settlement Advisory Committee, and not on the recommendation of the Land Board as originally provided. Provision is also made to enable returned soldiers who hold land on lease from the Crown or under agreement for purchase from the Crown to obtain advances in the same manner as if the land had been allotted to them under the Returned Soldiers Settlement Act.

Education.—The object of the Education Act Amendment Act (No. 1268) is to ensure as far as possible that all education in schools throughout the State shall be through the medium of the English language, and shall foster English ideals and English habits of thought.

S. 3 of the Act amends s. 53 of the Education Act, 1915, which provided that instruction in schools must, for at least four hours each day, be given through the medium of the English language. S. 53 as amended prohibits instruction in any school otherwise than through the medium of the English language.

S. 4 prohibits teaching in primary schools of the German language or any other language which the Governor by proclamation forbids to be taught.

S. 5 provides for the closing of forty-nine German Lutheran private schools mentioned in the Schedule to the Act.

Financial.—The Consolidated Stock and Sinking Fund Act Further Suspension Act (No. 1256) postpones for the duration of the war the statutory obligation to set aside every year out of the General Revenue a certain sum to form a Sinking Fund for liquidation of the public debt.

The Loan Acts Amendment Act (No. 1239) authorises the payment of interest on loan moneys at rates not exceeding 6 per cent. This provision is necessary owing to the fact that a number of Loan Acts provide that the interest payable on a loan raised under the Act shall not exceed 4 per cent. or 4½ per cent.

The Redemption of Public Securities Act (No. 1263) authorises the raising of loan moneys to redeem certain Bonds, Inscribed Stock and Treasury Bills, amounting to £2,655,938, which fall due during the year 1917.

The Commonwealth has at present no power to tax civil servants of this State or the officers of local governing bodies in this State. Hence the State Salaries (Commonwealth Taxation) (No. 1247) is necessary to bring within the scope of the Commonwealth Income Tax Act passed in 1915 State civil servants and local government officials. The Act provides that taxation by the Commonwealth of the salaries, allowances and other remuneration paid to officers of the State, or to Ministers of the Crown and Members of Parliament, or to officers in the employ of local government authorities, is not to be deemed an interference with the exercise of any power of the State. The salary of the Governor of this State is exempt.

The object of the War Funds Regulation Act (No. 1254) is to enable some supervision and control to be exercised over the collection and expenditure of moneys raised for patriotic purposes in connection with the present war. Before the Act was passed any person might initiate a fund or commence a street collection and the public had no guarantee that any money collected from them ostensibly for patriotic purposes would actually be used for those purposes.

The Act contains a number of provisions adapted from similar legislation passed in the other States of the Commonwealth, in New Zealand, and in England.

Under the Act the control over war funds and collections for such funds is to be exercised by the State War Council.

S. 7 makes it unlawful for any person to collect money or articles for any war fund without the authority of the Council. Collections made by way of a general appeal to the public at a public meeting are exempted from the operation of the section, and there is also power to make further exemptions.

Authority is given to transfer to the State War Council moneys in any war fund if they will not be required for the purposes for which such war fund was instituted, or if a majority of at least three-fourths of the Trustees of the Fund consent to this course, or if there has been maladministration of such moneys. The trustees of every war fund which is not transferred to the Council must furnish comprehensive particulars to the Council in relation to the fund under a heavy penalty for default.

Power is given for the Commissioner of Audit or other Govern-

ment officer to inspect and audit the accounts of any war fund and to make a report of the result to the responsible Minister.

Taxes on Amusements.—The principal object of the Stamp Act Further Amendment Act (No. 1244) is to impose a tax on amusements, and the provisions therefor are by way of amendment of the Stamp Acts, because the tax is to be imposed by means of a stamp on the tickets for admission to the amusement. The provisions referred to are adopted from the English Finance (New Duties) Act, 1916, but the rates of duty imposed under this Act are very much lower than those authorised by the English Act.

Particular attention is drawn to the definition of "amusement," for on this definition depends largely the scope of the tax. "Amusement" is defined to mean concert, recital, lecture-reading, entertainment of the stage, cinematograph or other picture show, dancing, boxing, horseracing, or other exhibition, performance, amusement, sport, game, or contest of any kind whatsoever to which persons are admitted for payment.

Stamp duty is to be charged on all payments for admission to any amusement as defined by the Act at the rate of one farthing where the charge for admission is 3*d.* and of one halfpenny where the charge is 6*d.*, with an additional halfpenny for every additional sixpence or fractional part of sixpence.

S. 7 forbids the admission of any person to an amusement unless such person has presented a ticket stamped with a stamp denoting that the amusement duty has been paid. If, however, approval has been given for the use of automatic turnstiles for the furnishing of periodical returns of tickets sold, the use of a stamp on the ticket may be dispensed with.

S. 8 provides that the amusements duty shall be charged in respect of each person admitted to an amusement for payment. In the case of admission by stamped ticket, the duty is to be paid by means of a stamp on the ticket, and in the case of admission otherwise than by way of stamped ticket, *e.g.* through approved turnstiles, is to be calculated and paid on the number of admissions. The duty may be denoted by an adhesive stamp, and is made recoverable from the promoter of the amusement.

S. 9 makes provision for calculating the duty in respect of members' tickets and season tickets.

S. 10 provides for certain exemptions from the incidence of the

tax. These are agricultural, horticultural, floricultural, poultry, dog, and other similar shows. Moreover, other amusements arranged for charitable, patriotic, religious, educational, or scientific purposes may, if the Commissioner of Stamps is satisfied that the whole of the gross takings, or the whole of the net proceeds, of the amusements are to be devoted to such purpose, and that the estimated expenses to be incurred in connection with the amusement are reasonable, be exempted from liability for payment of the tax.

S. 18 enables regulations to be made for carrying into effect the provisions of the Act, and especially for dealing with the supply and use of stamps and stamped tickets or for the stamping of tickets sent to be stamped.

S. 21 provides that the amusement tax is to cease to operate on December 31, 1917.

S. 22 provides for an amendment of the Second Schedule to the Stamp Act Amendment Act, 1902, which is intended to make quite clear that coupons and interest warrants are chargeable with duty, whether payable on demand or not. It also provides for the exemption of Government coupons and interest warrants. The section further provides for removing post-nuptial settlements on a wife from among the exemptions from stamp duty. The reason is that this exemption has been much used for the purpose of procuring evasions from stamp duty.

S. 23 amends the definition of "mortgage" in the amending Stamp Act passed in 1915, so as to make equitable mortgages chargeable with stamp duty.

S. 24 provides for an amendment of the same Act which will make all conveyances, except conveyances on sale and certain other conveyances, such as conveyances made by a trustee to his beneficiary in pursuance of the terms of a will, chargeable with duty as voluntary conveyances. This amendment also is intended to prevent evasions of the liability to pay stamp duty.

S. 25 provides that the duty on coupons and interest warrants may be denoted by an adhesive stamp.

S. 26 provides that Commonwealth securities issued in connection with the war loans are to be exempt from stamp duty.

The provisions of the Act other than those relating to the amusements tax are to expire twelve months after the declaration of peace.

Administrative.—The Public Service Act (No. 1259) makes

complete provision for the administration of the Public Service (with certain exceptions hereinafter mentioned) including the appointment and dismissal of officers, and their classification and salaries.

The exceptions referred to are set out in s. 6 of the Act. They include certain high officers, the Railways and Education Departments and the Police Force, persons employed at weekly or daily wages, officers excluded by Act of Parliament, and officers excluded by proclamation made on the recommendation of the Public Service Commissioner. But there is power to bring in excluded officers and departments, except where the exclusion is made by Act of Parliament.

The Act provides for a re-classification of the Service by a Board appointed by the Governor. This work is to be done as soon as practicable. The Board is to prepare a "provisional classification" assigning to each permanent officer in the Service certain duties at a certain salary and placing him in a certain class.

The Board is only to be appointed for the work above described; for the permanent administration of the Service a Public Service Commissioner is to be appointed by the Governor. His tenure of office is such as to make him free from political control.

The Commissioner is to inspect the various Departments and as far as practicable the work of each officer, and may recommend any particular disposition of officers, the division, class, and grade of any officer, and any rearrangement of work.

Provision is made for getting rid of officers when the service proves to be overmanned; but the surplus officers in any department are to be provided, if possible, with offices in other departments.

Practically the Commissioner is an advisory officer, his functions being to advise the Government as to classification, appointments, and the best arrangements for making the service most effective.

The Act provides for three divisions of the service—the Professional, the Clerical, and the General. The Professional and Clerical Divisions are each to consist of five classes and cadets. The classes of the General Division are to be determined for each department by its own classification.

Salaries: The First Class is determined by the estimates of expenditure approved by Parliament each year.

Other classes: Such minimum and maximum limits of salary

as are determined by the responsible Minister on the recommendation of the Commissioner.

Admission to the service, subject to certain special exceptions, is to be by examination, and, at first, on probation for six months.

Arrangements may be made for performance of Federal duties by State officers, and *vice versa*.

Temporary employment of persons not in the service is regulated by s. 48; the limit of employment is eleven months, and the same person may not be re-employed before an interval of one month has expired. Exception may be made in case of works of construction.

Internal administration of the Service, such as creation or abolition of offices, transfers of officers from one office to another, and filling of vacancies is dealt with in Part V. In filling vacancies efficiency is the first test and seniority the second.

For promotion in class, examinations are to be passed.

On certain grounds set out in s. 57 an officer may be dealt with as follows under s. 58:

(*a*) He may be temporarily suspended by the Permanent Head of his Department, or he may be allowed to continue work pending inquiry.

(*b*) He is to be supplied with a statement of the charge against him and be asked for his explanation.

(*c*) The Permanent Head is to consider the charge and explanation and either remove the suspension or reprimand the officer, or if he considers that the alleged offence has been committed and is of a serious character, he may refer the charge to a Board of Inquiry of three members presided over by a Judge of the Supreme Court or a Special Magistrate.

(*d*) The suspended officer has the right of appeal to the Commissioner against action of a Permanent Head and the decision of the Commissioner in the matter is final.

(*e*) If the charge is reported to be proved the Minister may deprive the officer of leave of absence, or reduce him in class and salary, or transfer him to another office, or dismiss him from the service.

(*f*) If the charge is not proved, the officer is to be restored. On the hearing of charges a suspended officer is to be allowed the service of counsel if the Minister approves, and his expenses

(including loss of salary incurred in consequence of the suspension) may be allowed if the charge is not proved.

The services of incapable officers may be dispensed with on the recommendation of the Commissioner, or they may be transferred; and the general right of the Crown to dispense with the services of its servants is preserved.

Aliens in the service must immediately after the commencement of the Act obtain a certificate of naturalisation as British subjects. Only natural born or naturalised British subjects are in future to be admitted to the service, and no person who has been an enemy subject and has subsequently become naturalised is to be admitted to the public service within five years from the date of his naturalisation.

Police Pensions.—The object of the Police Pensions Act (No. 1262) is to make provision for paying pensions and other benefits to members of the Police Force. Previous to the passing of the Act, only certain of the older members of the Police Force were entitled to pecuniary benefits on retirement at the age of seventy years.

The Act provides for the establishment of a Police Pensions Fund, which is to consist partly of money in the existing Police Fund, partly of subscriptions already paid by the Police to the Public Service Superannuation Fund(to which Fund members of the Police joining subsequent to 1904 were bound by law to subscribe), partly of moieties of fines, forfeitures, and penalties payable to members of the Police Force under various special Acts, and partly of an amount being not less than £8 nor more than £10 8s. in each case, deducted annually from the salaries of the Police. All these payments, however, are to be supplemented by governmental contributions, and the Government practically guarantees the solvency of the Fund. It is estimated that the Governmental contribution will amount to far more than all the contributions from other sources combined.

The age of retirement from the Force is reduced from seventy to sixty years, but there is a provision enabling the services of certain members to be retained in the Force from year to year during the first five years after the passing of the Act. This power, however, is only to be exercised in favour of persons whose services it is expedient in the public interest to retain.

Members of the Force who are already subscribers to the Public

Service Superannuation Fund are bound to withdraw from that fund if they have become subscribers subsequent to 1904, but if they became subscribers before that date such retirement is optional, and a subscriber of the latter class may, if he desires to subscribe to both funds, benefit under both. The pension is to be at the rate of £130 per annum, payable monthly.

If a member of the Force retires or is discharged after having served at least three years, but before attaining the age of sixty years, he is to be entitled, in case he resigns, to a refund of three-quarters of the actual amount already paid by him into the fund, and, in case he is discharged, to such sum as the Government approves. If he dies his dependants are to be paid the total amount of his actual subscriptions to the fund.

If a member of the Police Force has been disabled by any injury or disease arising out of his duties in the Force of such a nature as to totally incapacitate him from earning his livelihood he may receive a pension of any amount not exceeding £130 per annum or at his option claim compensation up to £500 under the Police Fund Distribution Act, 1904.

Pensions are to be inalienable, and the pension is to be forfeited or reduced upon conviction of the pensioner for felony or any misdemeanour punishable by imprisonment for two years or upwards, or upon his being declared by a Court to be an habitual drunkard.

The Police Act (No. 1257) is merely a consolidation of the previous law on the subject contained in Act No. 15 of 1869–70, as amended by No. 715 of 1898–9 and No. 1117 of 1913. It is one of a series of similar Acts which have lately been passed in this State with the object of gradually codifying the statute law.

Industrial.—The Industrial Arbitration Act Further Amendment Act (No. 1243) enables the Governor, when judicial assistance is required in the Industrial Court, to appoint a Stipendiary Magistrate, who, in addition to his ordinary duties, is to act as the President's Deputy. The appointment is during the Governor's pleasure. The President's salary is fixed at £1,700 per annum by Act No. 1261.

The Shearers' Accommodation Act (No. 1241) makes provision for better sanitary and hygienic conditions in the accommodation provided at shearing-sheds for shearers in those respects in which experience has shown the requirements of the existing law to be

inadequate. The Act dealing with the matter is the Shearers' Accommodation Act, 1905. In addition to the accommodation required by that Act to be provided for shearers at shearing-sheds, this Act requires that each kitchen and each sleeping and dining room is to be supplied with sufficient light and ventilation. These rooms are to be cleaned and fumigated or disinfected at least once every year to the satisfaction of an Inspector. The three rooms already mentioned must also be provided with flooring of a suitable material to the approval of an Inspector. A meat-house or meat-safe must also be provided, which is sufficient to protect the contents against contamination. The Act also requires that a sufficient supply of good drinking water is to be provided, and also for the provision of proper cooking, drinking, and washing vessels and utensils.

The most important requirement of the Act is as to the distance of the shearing-shed from the building in which the accommodation is provided for the shearers. The Act of 1905 merely requires that the two buildings should be separate. The Act under consideration, however, provides that such buildings must be distant from the shearing-shed at least fifty yards. There is a proviso, however, exempting from the operation of this provision buildings erected prior to the passing of the Act, provided that the accommodation contained therein complies in all other respects with legal requirements and is approved by the Minister administering the Act.

Public Protection.—The necessity for the Health Act Further Amendment Act (No. 1248) has been revealed by the decision of the South Australian Supreme Court in the case of *G. Laughton & Coombes, Ltd.* v. *Master Butchers Ltd.* This was a case in which action was brought to recover the price of two pigs bought at auction by the defendants from the plaintiffs, at the time of sale, unknown to both the plaintiffs and the defendants, to be suffering from a disease. The Supreme Court held "that the presumption arising from the general object of the Health Act, 1898, and the absolute wording of s. 109, that sales of diseased animals are prohibited, whether the owner knew them to be diseased or not, is rebutted by the language of the Legislature itself in ss. 106 and 111."

It is abundantly clear from the judgment of the Court that had the evidence provisions of ss. 106 and 111 of the Act been expressed affirmatively instead of negatively the decision of the Court would

have been different. This amending Act accordingly re-enacts ss. 106 and 111, stating affirmatively that the absence of knowledge on the part of the defendant as to certain facts is to be a defence under those sections, and by implication providing that in other sections creating offences (including s. 109) absence of knowledge is not to be a defence.

From the judgment referred to, it appears that the Court would hold that to constitute an offence under s. 109 the animal must be sold "for food." S. 4 of this amending Act, therefore, provides for the addition to s. 109 of a paragraph throwing upon the defendant, in cases where it is proved that diseased meat has been sold, the onus of proving that the meat in question was not sold for food.

S. 6 of this Act is also an evidence provision, and places upon the defendant, in cases where it is proved that an article was exposed in a place to which the public had access, or in any market or shop, the onus of proving that the article in question was not exposed for sale.

The Food and Drugs Act Amendment Act (No. 1252) enables the strength of spirits to be reduced by being diluted with water, provided that such dilution as estimated by Sykes' hydrometer has not reduced the spirit more than 35 degrees under proof for brandy, whisky, rum, schnapps, unsweetened gin, or other unsweetened spirits, or 45 degrees under proof for sweetened gin or other sweetened spirits. The limit of legal dilution before the passing of this Act was 25 degrees and 35 degrees respectively. The Act also prohibits the possession of or dealing in absinthe.

The Licensing Acts Further Amendment Act (No. 1269) makes various minor amendments in the Licensing Act, 1908, and amending Acts for the purpose of effecting adjustments and adaptations which experience has shown to be necessary or desirable for the more effective working and enforcement of the liquor licensing legislation.

Provision is made for the Licensing Court to grant a special licence where the renewal of a licence is objected to and consideration of the case is adjourned. The special licence will only be granted until such time as the objection is disposed of.

Various minor amendments are made in Part III. of Act No. 1236 of 1915, dealing with the assessment of fees for publican's licences. The provisions as passed in 1915 were found to be un-

workable. Their coming into operation has, by the amending Act now under consideration, been postponed for another year.

Power is given to a Licensing Court to order the removal of bells, trap-doors, and other devices erected by licencees which the Court is of opinion are calculated to facilitate breaches of the Licensing Acts. Such breaches have become alarmingly frequent in this State since the institution of six o'clock closing of liquor bars.

The power given to the President of the Industrial Court under Part VI. of Act No. 1236, 1915, to adjust rents consequent on the earlier closing of licensed premises may, by virtue of a provision in this amending Act, be exercised by a Stipendiary Magistrate appointed by the Governor for the purpose.

Abattoirs.—The object of the Metropolitan Abattoirs Act Further Amendment Act (No. 1253) is to make various minor amendments of the Metropolitan Abattoirs Acts, 1908–14.

S. 3 is intended to meet difficulties which arise upon the severance of any part of a Municipality or District Council District within the Abattoirs Area so as to create the severed portion a new Municipality or District, or add the severed portion to an existing Municipality or District. It is desired to make it quite clear that the severed portion continues after severance to be part of the Metropolitan Abattoirs Area and that the Corporation of the Municipality or the Council of the District Council District within which the severed portion is comprised after severance becomes liable for its proportion of the liabilities of the constituent Corporations and Councils under the Abattoirs Scheme.

S. 4 enables pork small goods to be sold within the Abattoirs Area notwithstanding that the swine from which they are derived were not slaughtered at the abattoirs, but were slaughtered outside the area. The carcases of these swine, however, must after slaughter have been inspected by a special Government Inspector appointed for the purpose.

S. 5 enables tinned meat not derived from stock slaughtered at the abattoirs to be sold within the abattoirs area.

Mines.—The Mining on Private Property Act Amendment Act, 1916 (No. 1267), provides for amending the Mining on Private Property Act, 1909, in the following respects:

(1) The definition of "private land" contained in the principal Act is amended so as to make it clear that a person desiring to mine

on land comprised in a Crown Lease or on lands the minerals wherein have been reserved to the Crown does not need to observe the stringent conditions required of persons who desire to mine on land the metals wherein are the property of the owner of the land.

(2) The principal Act exempts several classes of property from its operation. These include any land within 200 yards of any artificial well, reservoir, or dam, or any dwelling-house, factory, or building.

S. 4 of the amending Act curtails the area of exemption in respect of land adjacent to buildings to 150 yards.

(3) The Governor has power, under s. 8 of the principal Act, to resume provisionally the ownership of private land for mining purposes. If, however, the owner of the land does not consent to its being resumed, certain conditions must be fulfilled before the resumption can take place. One condition is that an Inspector has certified to the Minister that he has examined the land in question, and that he is of opinion that payable reef metal exists therein, and that he is of opinion that such land ought to be resumed for the purpose of mining. This condition is so drastic as to make the section almost useless in practice.

S. 5 of the amending Act, therefore, amends s. 8 so as to make it sufficient for the Inspector to certify that in his opinion there is a "reasonable prospect of mining the land at a profit."

(4) S. 7 of the amending Act provides for the re-enactment, with various amendments, of s. 25 of the principal Act, which enables the holder of a miner's right to obtain from the Minister or a Warden of Mines or Mining Registrar authority to enter upon private land, and to peg out a claim; but there is no authority to do anything further, and the section is therefore of little use. The new section (s. 25) involves various amendments of the old section.

(*a*) It requires that the applicant for authority to enter upon private land to peg out a claim shall deposit with the Minister or other person to whom the application is made a sum not exceeding Five Pounds, by way of security for compensating the owner or occupier of the land for any damage done in the exercise of the powers granted to the applicant. If the owner or occupier of the land can show to the satisfaction of the Minister that he has sustained damage, the Minister will expend the deposit in compensating him.

(*b*) The person authorised may, in addition to pegging out a claim, prospect on the land, but his prospecting is limited to an area of one square mile and a period of fourteen days; he may also make trenches and sink holes for the purpose of searching for minerals, but the area of the surface broken by such operations is not to exceed one hundred feet. He may also remove samples from the land for the purpose of ascertaining their value, provided that no sample exceeds 28 lbs. in weight. The manner in which these powers may be exercised may be further limited by regulation.

(5) The provisions of the principal Act are not satisfactory with regard to the basis to be adopted in assessing the compensation to be paid before a man is allowed to mine on another's property or to get a compulsory mining lease thereof. The proper basis is that he should be required to prepay by way of compensation the probable amount of permanent damage, and that compensation for damages of a temporary nature should be included in the rent. Accordingly ss. 8, 9, and 10 of the Amending Act effect various amendments of the principal Act with the object of making this intention unmistakable.

(6) S. 11 of the amending Act provides for various amendments of the principal Act, which enables the Minister to grant to an applicant a mining lease of private land upon failure of the owner upon request to do so. At present, however, before this can be done various conditions must be fulfilled. One condition is that an Inspector must have examined the land and certified to the Minister that in his opinion payable metal exists therein. The stringency of this condition renders the power of little practical use; it should be sufficient if the Inspector certifies that he is of opinion that there is a reasonable prospect of mining the land at a profit, and the first amendment made by s. 11 makes provision accordingly. A further condition is that the lease is not to be granted until the expiration of two months from the making of the application for it. The object of this is to give the owner of the land an opportunity, if he thinks fit, to mine the land himself, and the owner of the land is enabled, by complying with the necessary working conditions, to oust the claims of the applicant and to make it impossible for the Minister to grant a compulsory lease. The section under consideration repeals the condition referred to.

(7) Under the principal Act, before the miner who had obtained a lease of private land for the purposes of mining could start operations, he had to pay for all damage he was likely to do anywhere within the area of his lease while his lease continued. The amount of compensation payable was often prohibitive.

S. 12 of the amending Act enables separate amounts of compensation to be fixed for separate parts of the land, or for compensation to be fixed at so much per acre. In that case the lessee, before using any particular part, or any area, must pay the compensation fixed in respect thereof.

Advertisements.—The Control of Advertisements Acts (No. 1238) provides a means whereby proper and effective control may be exercised over the exhibition of advertisements with a view to preventing the exhibiting of such as are unsightly or disfiguring. Before the passing of the Act such advertisements, if exhibited within a local government area, might be dealt with by the local governing body by bylaw. The Act, however, does not override any existing bylaws dealing with disfiguring advertisements; it is supplemental merely; but should there prove to be any conflict the Act and the regulations under it are to prevail.

The Act does not apply within any Municipality or township nor does it affect in any way any advertisement which relates solely to the trade or business carried on upon, or to any public meeting or entertainment to be held in, the premises on which such advertisement is exhibited.

Under the Act the Governor may, by regulation, restrict or absolutely prohibit the exhibition on any public road, sea beach, or navigable waterway, or in sight thereof, of any advertisement which spoils the enjoyment of the scenery or disfigures the natural beauty of the landscape. Any disfiguring advertisement which is visible from a public road or beach, even though situated on private property, would thus come within the scope of such a regulation. Regulations have already been made in pursuance of this power prohibiting the exhibition of disfiguring advertisements in any District Council District in the State.

Any disfiguring advertisement which is exhibited in contravention of the regulations may be obliterated or removed by authority of the Minister administering the Act after notice to the owner or occupier of the land whereon it is erected. All costs and expenses

incurred by the Minister in this work may be recovered from the defaulting owner or occupier, and this in addition to any penalty that may be imposed by the Court for the offence of exhibiting an advertisement contrary to the regulations.

To guard against hardship being suffered by any one on account of irresponsible persons instituting proceedings for offences against any regulation, the Act requires all alleged offences to be reported to the Minister, and no proceedings for an alleged offence are to be taken without the consent of the Government.

In connection with prosecutions under the Act certain evidence sections make the allegation that an advertisement is of a disfiguring character conclusive evidence of that fact, and also throw on the defendant the onus of proof that he is not the person responsible for exhibiting the advertisement.

Unauthorised Documents.—The object of the Unauthorised Documents Act (No. 1242) is to prevent the use of unscrupulous persons for their own ends of bogus documents so nearly resembling official documents that an ordinary member of the public might easily mistake them for such. This applies particularly to summonses and other processes issued out of a local Court for the recovery of a debt. It is the practice with certain debt-collectors in this State, before taking proceedings for the recovery of a debt, to send to the debtor a notice printed on a blue form with an official appearance headed with the Royal Arms, and perhaps with the name of some local Court, and perhaps bearing an imposing seal at the end. The notice generally purports to be issued out of some local Court, and might easily be believed to be so issued. The result is often tantamount to an abuse of the process of the Court, though generally it is not possible to punish it as such.

The Act prohibits the improper use of the Royal Arms either by printing or publishing any matter on which the Royal Arms are printed without authority, or by sending or delivering or serving such printed matter on any person.

The Act also prohibits the printing, publishing, selling, or using of documents pretended to be official. The Special Magistrate or Justice hearing the case is to determine whether the bogus document is so close an imitation of an official document issued out of a court of law or otherwise as to be intended to convey and to be

reasonably capable of conveying the impression that such bogus document is an official document.

Other remedies which may exist apart from the Act are preserved.

Gold Buyers.—The object of the Gold Buyers Act (No. 1245) is to check the practice of illicit dealing in gold, silver, and precious stones. The means devised to this end is to restrict to licensed persons the right to buy and smelt gold and silver, and to buy and sell precious stones. Provisions are also incorporated in the Act as to the onus of proof of title to such articles.

The Act is an adaptation of a Victorian Bill based on the Gold Buyers' Act which has been in force in Victoria since 1907 and in Tasmania since 1909.

The fundamental principle of the Act is stated in s. 4. Except in certain specified cases, no person, other than a person licensed in that behalf by the responsible Minister, may: (*a*) buy gold or silver, or (*b*) buy wrought gold or wrought silver at its metal value, or (*c*) assay or smelt gold or silver, or (*d*) buy or (except to a licensed dealer in precious stones) sell precious stones.

The exceptions are:

(1) That any manufacturer of jewellery or other manufacturer of gold or silver articles may, without a licence, buy gold and silver from a Mint, or from a licensed person, or from a registered Mining Company for his own manufacturing purposes and may smelt it.

(2) That any person may, without a licence, assay or smelt samples of gold or silver for experimental purposes.

(3) That any holder of a miner's right under the Mining Act, 1893, may, without a licence, smelt ores and any gold or silver obtained by himself by gold or silver prospecting or mining.

The selling of gold, silver, and precious stones by children under fifteen years is absolutely prohibited, and the other party to such transaction is also liable to a penalty.

S. 34 of the Act is important. It casts upon a person offering gold, silver, or precious stones for sale or smelting, or in possession thereof, the onus of satisfying the Court, if proceedings are taken, that he honestly came by the same. The difficulty in proving, against an accused person, where he obtained precious stones and metals is notorious; and the section mentioned has been the law

in Western Australia, as well as in Victoria, for some years past, with very beneficial results.

The remainder of the Act consists of machinery provisions regarding the issue of licences, etc., and regulating the duties of licencees and other incidental matters which do not call for special mention.

4. VICTORIA.

[*Contributed by* C. J. ZICHY-WOINARSKI, ESQ., K.C., *and* W. HARRISON MOORE, ESQ.]

Third session of Twenty-fourth Parliament—Acts passed, 68.

Education.—No. 2822 is a war measure. It authorises the Minister, if he is of opinion that it is expedient in the interests of the people of Victoria, to cancel the registration of certain enumerated Lutheran schools, and thereby close them as places in which education may lawfully be carried on. It is further provided that, subject to exemption by the Government, no school should be registered unless the English language is to be the medium of instruction "except only so far as the use of a language other than English is necessary for giving instruction in such other language as a special subject."

University Degrees.—No. 2830 enables the University to confer Degrees, Diplomas, Certificates or Licences which had been gained by its students prior to going on war service, but had not been conferred before the death of such students on service.

Members' Qualifications.—No. 2833 is a measure occasioned by but not limited to the war. It provides that members of either House of Parliament accepting service with the military or naval forces of the Commonwealth shall not by reason thereof incur the disqualifications involved in the acceptance of an office or place of profit under the Crown or otherwise.

Registration of Births, Deaths, and Marriages.—Under earlier legislation, now consolidated in Act No. 2720, children born out of wedlock may be legitimated after the marriage of their parents, if the father presents a statutory declaration in the form or to the effect prescribed by the Act. The present Act (No. 2843) enables the mother, within certain limits of time, where the father is dead or is on war service, to present such a declaration, provided that, in the

latter case, the written consent of the father be produced. A law officer is to certify in writing that he is satisfied that the husband was the father of the child; and, in the case of fathers on war service, the law officer, if satisfied that it is impracticable without undue expense or delay to obtain the written consent of the father, may direct that such consent be dispensed with. The Act applies also where a father, by reason of wounds or disease arising from war service, is unable to make application for the legitimation of the child under the principal Act.

Friendly Societies.—The object of No. 2883 is to enable members of Friendly Societies engaged on naval or military service to keep the sickness and funeral benefits provided by the societies, although they do not pay the contributions required by the rules. When the war broke out these societies arranged to pay the contributions of their members who went on military or naval service, and they have been making levies on their members for that purpose. This has proved a heavy strain, and the Act now postpones till after the war the duty to make up these payments. Every Society will now send, in a separate return from that of the contributions which have been paid, to the Government statist a statement containing the names of its members on war service who have not paid the contributions required by the rules, and during a period of five years after the termination of the war the societies shall raise the amount of these unpaid contributions with 4 per cent. compound interest added and make such levies on all members of the societies as are necessary for that purpose.

Last session a Friendly Societies Reinsurance Fund had been created to enable such societies, with the consent of their members, to reinsure their liability to their members on war service. This reinsurance may now (Act No. 2854) be made by the central body of any such society apart from its members (s 2).

Into the Reinsurance fund went all moneys received by the Government as Reinsurer, and out of it came all moneys due on the reinsurance, and the benefits which such societies reinsured were the sums payable on death, and the sums payable on sickness, but the amounts of these benefits was not uniform in the different societies. Death allowances show little variation, but some societies granted a higher rate of such allowance than others. Practically this Act now pools all the premiums received from such societies.

It divides up the Reinsurance Fund into two or more divisions as may be considered desirable by the Government statist, but claims may be met from either, and in the long run by the Government out of the Consolidated Revenue (s. 3). This Act also permits societies who may find it inconvenient to pay their premiums in cash to make transfer of Victorian Government stock held by them in lieu of cash (s. 5). The receipt of naval or military pay by a member is no disqualification to him as to his right to receive his sick pay from the society (s. 6). It is also provided that where the rules of a society provide payment to a member for incapacity due to sickness or accident that shall include incapacity due to a wound or wounds received on war service, unless express provision to the contrary is made (s. 7).

Two years from the termination of the war is fixed as the time before the expiry of which all claims due to the societies by the Government shall be adjusted (s. 4).

Pharmacy.—No. 2825 relates to chemists' apprentices on war service, and it empowers the Pharmacy Board of Victoria to remit a portion, not exceeding twelve months, of the term of four years of apprenticeship required to be served and—

"War service" is for this Act defined to be:

(*a*) Having volunteered or enlisted, he is engaged on naval or military service with His Majesty's naval or military forces or with the naval and military forces of the Commonwealth; or

(*b*) He is engaged in connection with the present war on service outside Victoria in any work of any Red Cross Society or ambulance association or other body with similar objects; or

(*c*) In connection with the present war he is a prisoner of war in the enemy's country or is interned in the country of a neutral Power.

Absence of a chemist's apprentice on war service is not to be a breach of his indentures of apprenticeship.

Wheat Marketing.—Act No. 2846 refers to the preamble of the Act of 1915 (No. 2812), and provisions there applied to the 1915–16 wheat are extended to the 1916–17 wheat. Under these Acts, the Government, acting in conjunction with the Governments of the Commonwealth and the other States, takes over the whole wheat

crop, with the co-operation of the banks finances the farmer, and arranges for the marketing.

State War Council.—No. 2884 incorporates the Council established by executive act, and defines its powers and functions. The scope of the Council's operation comprises generally the control over the raising and administration of war or patriotic funds. A "war fund" is defined as one raised by public or private subscription, or by other means, for any purpose in connection with the present war, and in particular relief funds, equipment funds, and comfort funds. The Governor-in-Council may vest in the War Council any war fund where three-fifths of the trustees of such fund have concurred, and in any case where there has been maladministration. The Council is empowered to expend any war fund or other moneys vested in it in the training of discharged soldiers, and is charged with the function of devising means for the re-employment and training of discharged soldiers. It is also designated as the State authority to co-operate in the administration of funds allotted under the Australian Soldiers' Repatriation Fund Act, 1916, an Act of the Commonwealth Parliament. No person may, without the sanction of the Council, establish any war fund or solicit subscriptions in connection with the war.

Evidence.—No. 2828 adopts for the State of Victoria the provisions of 5 & 6 Geo. V. c. 94 permitting the depositions of witnesses, who, by reason of being engaged on war services, are unable to attend the trial of accused persons, to be read in evidence at the trial. Proof is, of course, required that the deposition was duly taken, that the accused person had had full opportunity of cross-examination, and that the witness is on war service, and unable to attend the trial. It provides, too, for the infliction of a lesser punishment than that of death in the case of a person convicted of an offence punishable by death upon evidence solely contained in such depositions.

Constitution.—No. 2866 is an interesting measure in the history of the relation of public servants to politics. The political pressure exerted by organised public servants on many of the co-electoral districts for the promotion of their own interests led in 1903 to an amendment of the Constitution whereby such servants were no longer to vote in the ordinary territorial constituencies, but were formed into distinct constituencies to which

three seats in the Assembly and one seat in the Council were assigned. In 1906 this provision was repealed, and the public and railway servants of the State became again part of the territorial constituencies. But " in order that all officers may be enabled to render loyal and efficient service to the State," they were forbidden to take any part in relation to elections or the political affairs of the State otherwise than by recording a vote (Act No. 2075, s. 4). This prohibition is now removed, and public servants are free to take part in politics, subject to the qualification that they may not publicly comment upon the administration of any department of the State or use for any purpose other than for the discharge of their official duties information gained by or conveyed to them through their connection with the public service.

Municipal Rates Recovery.—Act No. 2861, where rates (or any other moneys charged on land) in respect of any land remain unpaid for ten years and the land has been unoccupied for five years, the Municipal Council to whom such rates are due may sell and convey the land. The estate and interest transferred is free of all estates, interests, and rights to which the municipality has priority by virtue of its charge. The title of the purchaser is not to be impeachable on the ground that no case has arisen to authorise the sale, or that the power was irregularly or improperly exercised. The remedy of the person damnified is to be in damages against the municipality. The purchase money received by the municipality is to be applied first in payment of costs incidental to the sale; secondly, in discharge of the rates; thirdly, in discharging mortgages or charges to which the claim of the municipality has priority; and, fourthly, in payment of the residue within twelve months to the registered owner or into Court.

Unauthorised Documents Act.—No. 2829 amends the Act passed in the previous session to protect people from being intimidated by debt-collectors who used fraudulent imitations of legal process for the purpose of collecting debts and expenses not legally payable. To fall within the main Act the document complained of had to resemble an actual document published or issued by or under the authority or with the sanction of any tribunal; and cases arose which could not be so classified. The new Act applies when, in the opinion of the Court before whom the proceedings for the penalty are brought, the unauthorised document was likely or intended to convey the

impression that it was so published or issued. The prohibitions also apply to a "seller" of such documents as well as to the "printer," "publisher," or "sender" of the document.

The director, manager, secretary, or officer of a body corporated who knowingly authorises or permits an offence under the Act is also made liable to the penalty or punishment (s. 3) and the form of the information for any such offence is also shortened (s. 4).

Poor Prisoners' Defence.—No. 2831 provides for the defence of accused persons who are without adequate means, and who have been committed for trial for an indictable offence against the laws of the State. Written application, to be made within fourteen days after committal, and in a prescribed form, to a Judge of the Supreme Court or to a chairman of General Sessions of the Peace, or to a police magistrate is one condition. Another is that a statutory declaration shall be made in verification of the application, and the most important is a certificate from the judge or other officer applied to that the applicant is without adequate means, and that it is desirable in the interests of justice that legal aid should be supplied. The Attorney-General may, upon such a certificate, cause arrangements to be made for the defence of the applicant and for the payment of the expenses of material witnesses.

Betting Tax.—Under Act No. 2835 bookmakers are required to take out a licence or permit and to pay a fee varying from £50 in respect to the principal race-courses to £5 in the case of meetings held under the auspices of the smaller racing clubs. Bets with bookmakers on any race-course are to be recorded on betting tickets issued to the backer, and each such ticket is to bear a 3*d.* or 6*d.* stamp if issued within twenty miles of Melbourne and 1*d.* stamp if issued on more distant race-courses.

Gaols.—No. 2851 is an amending Act, and it gives power to the Inspector-General to remove from one gaol or police gaol to any other *any* prisoner, whether convicted and serving sentence or not. A man may be arrested, *e.g.* in the country, and it may be advisable before his trial to remand him to Melbourne or some larger city for medical observation, and the power to do this was not in the principal Act, which limited the power of removal to convicted sentenced prisoners.

Another amendment made is a provision that a sentenced prisoner who escapes from gaol or lawful custody shall, on recapture

at any time thereafter, serve the full term of his original sentence, and that the period intervening between his escape or recapture shall only be suspended, and that this suspended sentence is to be cumulative on any sentence being served, and is to be served with all its original incidents if any (*e.g.* whipping or solitary confinement).

Presentments.—No. 2856 reproduces, with slight modifications, the Indictments Act, 1915 (5 & 6 Geo. V. c. 90). It provides for the sufficiency of a *presentment* (the terms used in Victoria commonly as the mode of prosecution for indictable offences) if it contains a statement in ordinary language, avoiding as far as possible technical terms, of the offence charged against an accused person, with such particulars as may be necessary to give reasonable information. It permits the joinder of charges, whether for felonies or misdemeanours in the one presentment for trial together, if they are founded on the same facts or form, or are a part of, a series of offences of the same or of a similar character.

The object of course is to bring in and impose brief criminal pleading and to remove technical restraints in procedure against offenders. As in England, the court of trial is empowered, if it thinks charges are improperly joined together, to order them to be tried separately.

The rules and forms are on similar lines to those in the English prototype; but it is only in certain cases that a copy of the presentment is required to be delivered to an accused person prior to his trial, viz. whenever it happens that the statement of the offence charged materially differs from its statement in the original information.

Venereal Diseases.—No. 2858 is an important Act. It attacks venereal disease in a bold and comprehensive way. It is based upon compulsion, treatment by skilled persons, secrecy of treatment, and universality of treatment. It defines "venereal disease" as gonorrhœa, gonorrhœal ophthalmia, syphilis, soft chancre, venereal warts or venereal granuloma; "child" as a person under the age of sixteen years; "medical inspector" as the medical inspector of the Board of Public Health; and it says that words importing the masculine gender shall be taken to include females. It is divided into two parts, of which Part I. only is important. It casts a duty upon every person suffering from any venereal disease, or suspecting that he is so suffering, forthwith, on becoming aware of his condition,

to consult a medical practitioner thereon, and to place himself under medical treatment or to attend a hospital or other prescribed place for treatment under a maximum penalty, for breach of duty, of £20 (s. 6).

A duty is put also on the parent, guardian, or other person in charge of any child suffering from any venereal disease to cause such child to be treated by a medical practitioner, and to exercise his authority to compel or induce such child to submit to such acts as are necessary and to report to the medical inspector with particulars in case the child fails to comply with any of the provisions of the Act (s. 12). Maximum penalty for breach of this duty is fixed at £10.

In regard to every person suffering from any venereal disease who has fulfilled the duty under s. 6, it imposes a further duty of personally attending or causing himself to be attended for treatment and advice at least once in every such period as may be prescribed, and to follow the advice until he has received a certificate of cure or of being free from venereal disease—under a maximum penalty, for breach, of £20. It provides, too, that if such person desires to change his medical adviser; or the medical adviser dies, or is unable or unwilling to attend him further, such person shall forthwith consult and place himself under the treatment of another medical practitioner, and inform his new adviser of the name and address of his last previous adviser; and in case the last previous adviser is living and in Victoria, the medical practitioner so informed is required to send a prescribed notice of the change made by the patient—under a maximum penalty, for breach, of £5 (s. 7).

Every medical practitioner who becomes aware that any person consulting or attended or treated by him is suffering from any venereal disease is required to notify the medical inspector thereof in a prescribed form and time; but the notice is not to disclose the name and address of the patient, and a maximum penalty, for breach of this duty, is fixed at £20 (s. 8). A medical practitioner is also required to send to the medical inspector in a sealed envelope marked "Confidential" a prescribed notice of facts when a patient who has been attended or treated by him for any venereal disease has failed to consult or attend such practitioner at least once during every such period as is prescribed, and no notice of a change of practitioner has been received. The maximum penalty for breach

of this duty is for the first offence fixed at £20, and for the second or any subsequent offence £100 (s. 9).

Again, every medical practitioner is required when he attends, treats, or advises any patient for or in respect of any venereal disease (except a child) to deliver a written notice to the patient—

(i) Directing his attention to the infectious character of the disease, and to the legal consequences of infecting others ;

(ii) Warning him against contracting marriage until certified as cured ; and

(iii) Giving him such printed information relating to the disease and the duties of patients as is prescribed. In the case of a child the written notice is to be given to the parent or guardian or other person in charge of the child and the maximum penalty, for breach, is £5 (s. 10).

A certificate of cure by a medical practitioner is to be given to the patient at his request, and the maximum penalty for giving a false certificate is £50 (s. 11).

The Act gives power to the medical inspector, who by a certificate given by any medical practitioner or by statutory declaration, is satisfied that there is reasonable ground for believing any person to be suffering from venereal disease, and not under treatment, to issue an order to such person requiring him to place himself under the care of a medical practitioner, and, if the order is not complied with, a police magistrate is authorised to cause him to be arrested and detained in any prescribed place for any period, not more than four weeks, for such clinical, chemical, bacteriological, or other examination as is necessary to find out whether or not he suffers from venereal disease. If the result of the examination is against the patient, the medical inspector may report to the Minister, and an order may issue to detain the patient in such conditions and place and for such time as are necessary to ensure his cure or his ceasing to be liable to convey infection. And the section permits the patient, so undergoing detention, to apply to a Supreme Court judge or to a police magistrate to direct two medical practitioners to examine him and report his condition, and, if the report justifies it, to order his release from detention, but at least three months must elapse between any two of such applications. It also permits the patient to obtain his release by proving to the satisfaction of the Minister that he can obtain and is prepared to undergo suitable private treat-

ment. Periodical examination by two medical practitioners is required in the case of all patients undergoing detention under this section, and it is enacted that no person shall be detained after he is cured or is free from the disease or has ceased to be liable to convey infection. Finally, the same section gives protection to the medical practitioner who, *bona fide* and without negligence, has given the certificate which caused the detention of the patient. A penalty of not more than £20 is fixed for any breach of this section (s. 13).

The Act makes provision for the treatment of prisoners in any gaol or reformatory, prison or reformatory school, and for their detention and removal from gaol, prison, or school for treatment, and during their detention for treatment they shall be deemed to be in legal custody, and the period of detention is to run concurrently with, but may exceed the sentence passed on, such prisoner (ss. 14 and 15).

In the case of any female to be examined under the Act she may require her examination to be by a medical practitioner who is a woman provided only that such a practitioner is available within a radius of twenty miles and is willing to act (s. 16).

A person who ceases to be infective, but has not been cured, is not exonerated from treatment under this Act (s. 17).

The Act imposes a maximum penalty of £100 or a maximum imprisonment of twelve months with hard labour, or both, on any person who knowingly infects any other person with a venereal disease or who knowingly does or permits or suffers any act likely to lead to the infection of any other person with such a disease (s. 18).

The penalty for permitting a female suffering from venereal disease to resort to any house for the purpose of prostitution is not so severe, but is to be inflicted unless the person charged proves that he did not know such female prostituted herself while in a state of disease (s. 19).

Upon the managers of any hospital receiving aid from the State is placed the duty of treating persons suffering from venereal disease free of charge (s. 20); and the Governor in Council may by s. 4 proclaim any such hospital or any ward therein as a place in which persons may be detained for treatment.

The Act prevents any person other than a medical practitioner or a person acting under the direct instructions of a medical practitioner from attending upon or prescribing for or supplying any

drug or medicine to cure, alleviate, or treat any venereal disease; but this is not to apply to a registered pharmaceutical chemist who dispenses to the patient of a medical practitioner a written signed prescription of such practitioner or who sells or supplies any drug or medicine (not prohibited by regulations) in the ordinary course of his business and provided such drug or medicine is not prescribed by the chemist for any person suffering from venereal disease for the purpose of curing, alleviating, or treating such disease (s. 5).

The Minister may—

(*a*) Establish hospitals or places for the reception and treatment of persons suffering from venereal disease;

(*b*) Arrange for the examination or treatment by medical practitioners of persons suffering from venereal disease and for the remuneration of such practitioners under such arrangement;

(*c*) Arrange for chemical, bacteriological, and other examinations and investigations free of charge to the patient for the purpose of ascertaining whether a person is suffering from or is cured of any venereal disease, or whether he has ceased to be liable to convey infection, and for the remuneration payable under any such arrangement;

(*d*) Arrange for the supply of drugs, medicines, and appliances for the treatment, alleviation, and cure of venereal disease in the case of persons unable through poverty or otherwise to pay for the same; and

(*e*) Provide for the preparation and distribution of information respecting venereal disease (s. 21).

S. 23 provides fully for the regulations that may be made under the Act by the Governor in Council.

Part II. of this Act widens some of the provisions and increases some of the penalties of the Police Officer Act, 1915, in relation to obscene and indecent publications.

Lunacy.—No. 2886 makes some small amendments in the principal Act. The Superintendent of any hospital for the insane may, with the consent of the Inspector-General, or the Inspector-General himself may send a patient to any place for his health or permit him to be absent on trial leave; but the Act gives no power to rescind such leave and bring back the patient, and now power is given to rescind the leave and require the patient forthwith to return (s. 2). Power is given to the Master-in-Lunacy who is managing the estate

of any lunatic to mortgage his real property (s. 3). Power is also given to the Master-in-Lunacy, on the discharge or death of any lunatic patient, to certify to the sum due for maintenance of such patient, and the sum becomes a debt due to His Majesty, and may be retained by the Master out of the estate or be paid by the patient or his legal representative (as the case may be) (s. 4).

In the case of a person arrested for a crime, but proved to be insane and unfit to plead, and ordered to be detained during the Governor's pleasure, a like power is given to the Master to apply his property for his benefit as is already given to the Master in the case of a person acquitted of a crime on the ground of insanity (s. 5).

Midwives.—No. 2887 amends in a few matters the main Act passed last session. The Board is increased from three members to five, three to form a quorum (s. 2). The necessity for the publication in the *Government Gazette* every year of the list of registered midwives is dispensed with and a supplementary list only need be published containing alterations, additions, revisions, and removals made in the register during the preceding twelve months (s. 3).

The conditions of registration are to some extent altered by s. 4. Under the main Act a woman who had almost completed her training as a midwife was not credited with that training, but needed to start afresh, but now s. 4 alters this, and allows the Board to prescribe for her a modified examination for her registration. S. 5 gives a medical practitioner engaged in a case of emergency by a midwife the right to sue the patient or her husband or other person liable for confinement expenses, and provides that the Board may, on certain conditions, pay the medical practitioner when the fee cannot be paid by the patient or her husband.

Medicine.—No. 2870 requires every written prescription of a medical practitioner to be dated and to bear the address and usual signature (including the surname) of such practitioner, and every practitioner contravening this requirement is liable to a penalty of £5. Under the provisions of the Venereal Diseases Act, 1916, a medical practitioner prescribing for a patient suffering from venereal disease was obliged to sign his name in full; and it was thought that unless in all cases of written prescriptions the same obligation was imposed, information would be given that a patient was suffering from venereal disease who presented a prescription signed in full.

White Phosphorus Matches Prohibition.—No. 2845 is a short

Act, forbidding the manufacture or sale of any matches in which white phosphorus is used.

Footwear Regulation.—No. 2869 is an Act against adulteration in the sales of boots and shoes. It is an offence to have for sale any boots and shoes the soles of which are not entirely composed of leather (except so far as it consists of rubber and certain other prescribed materials) unless the sole is conspicuously stamped with the name of the other material used. Inspectors may enter places where boots and shoes are exposed for sale for the purpose of assisting in the enforcement of the Act. No proceedings under the Act are to be taken without the consent of the Minister; and informations against offenders are to be dismissed where the defendant shows that the goods were purchased from a manufacturer named by him, and that he had no reason to believe that they were adulterated.

Water.[1]—No. 2852 is an Act amending the Water Act, 1915. It amends the provisions of the principal Act regarding the apportionment of surplus water for irrigating land under intense culture.

The estimated receipts from the sale of additional water for irrigation are to be considered in computing the rate of payment per unit of volume for water in irrigation and water-supply districts; and in regard to rates Water Authorities are empowered to fix a minimum rate by bylaw in place of the minimum rate as formerly fixed by the principal Act. Provision is made whereby rates made and levied by the State Rivers and Water Supply Commission may be made and levied on the basis of the unimproved capital value of rateable properties.

The liability under the principal Act of a Water Authority to make compensation for injuries to riparian rights and by flooding is limited to cases of intentional or negligent acts or omissions of the Authority or its servants, agents or contractors, but the onus of proof of absence of intentional or negligent acts is placed on the Authority. The watering of gardens is declared not to be a domestic purpose, and provision is made as to charging for water supplied for that purpose.

The subdivision of land to which a water right has been apportioned in an irrigation and water-supply district is to be subject to the approval of the Commission, which may reapportion to each

[1] Contributed by J. T. Collins, Esq., Parliamentary Draughtsman for Victoria.

holding in the subdivision as a water right a due proportion of the existing water right.

The Commission is authorised to sell to any other Water Authority or to a municipal council electric or other power produced by the works of the Commission, and also to purchase such power in certain cases. A Water Authority is empowered to prohibit or regulate by bylaw the clearing, cultivating, or fallowing of land near to channels.

Other amendments of the principal Act are made which are designed to facilitate administration.

Fungicides.—No. 2850 enables the Governor in Council to prescribe a standard for any fungicide, insecticide, vermin destroyer, or weed-destroyer, fixing their constituents and the quantities of such constituents, and the chemical or physical conditions of such constituents. Thereafter any sale not in accordance with the standard is an offence. It may also be required that a statement of the constituents and percentages shall accompany the sale. Buyers of any of these commodities, in compliance with the conditions of the Act, may have the fungicide, etc., analysed, and the results of the analysis with the name and address of the vendor may be published in the *Journal of the Department of Agriculture of Victoria* and in such other manner as the Minister directs or as is prescribed.

Registration of Deeds.—An absolute bill of sale in Victoria since 1892 could be registered without any notice being given of an intention to file it, and so a dishonest debtor had thereby an opportunity to defraud his creditors by collusively giving an absolute bill of sale over his chattels in his possession to a third party. A conditional bill of sale or security for money lent, when the chattels remained with the borrower, required the granter to give notice, and any creditor could offer a caveat forbidding its registration. No. 2857 now requires a notice to be given of an intention to file an absolute bill of sale, and provides for a caveat to be lodged, forbidding its registration, and provides for the form of notice to be used in any such case.

Transfer of Land.—No. 2849 amends the Transfer of Land Act, 1915, in the main for its more convenient and economical working; but not altogether for that reason, and some changes of value are made. The Registrar may issue certificates of title on durable paper in lieu of parchment (s. 2).

Every memorial entered in the register book is to set forth certain particulars, *e.g.* the name of the registered proprietor and the hour of registration, so as to reduce the work of the office and the liability to error (s. 4).

The necessity of specifying some only of the special conditions contained in the original Crown grant in a certificate title is no longer to be necessary, and they need to be indicated only in general terms (s. 5).

The necessity for a Crown lessee who has transferred part only of his leasehold premises delivering up his lease to the Registrar is now avoided, and it need not be done unless the whole of the land affected by the lease is transferred (s. 7). A proviso is also added enabling the Registrar to call upon a proprietor to take out a balance certificate of title when the existing duplicate certificate or title is too bulky to be conveniently handled in consequence of the number of sheets annexed to it, and when for any reason satisfactory to the Registrar it is inadvisable to reissue the existing duplicate after a transfer as to a part has been registered (*ibid.*). The powers of sale under a mortgage or charge under this Act are now brought more into line with the powers conferred on a mortgagee of land under the general law under the Conveyancing Act, 1915 (s. 9).

The real object of this s. 9 is to remove an anomaly by placing a purchaser from a mortgagee of land under the Act in the same position in certain respects as a purchaser from a mortgagee of land which is not under the Act. A purchaser from a mortgagee of land which is not under the Act is not bound to inquire whether default has been made in payment, or whether notice to pay has been served on the mortgagor. He may assume that those are the facts and that the mortgagee is properly exercising his power of sale. Under the Transfer of Land Act, on the other hand, the purchaser was practically bound to make these inquiries. It is true that the Act (s. 148) says that he need not do so. But in fact he must, for this reason, that the Registrar of Titles refused to register the transfer to him unless and until he is furnished with proof of default and service of notice. In future the mortgagor of land under the Act will have to rely solely, as his remedy, on damages if the mortgagee does not exercise the power of sale in accordance with law; the position being as under the general law.

Power is given to the Registrar to make entries on receipt of

originals as well as office copies. This was already the practice of the office, although upon a strict construction of the previous section dealing with the matter an office copy say of a probate, should have been produced in support of a transmission application, even though the original probate were produced. This authorisation will avoid the expense involved in obtaining an office copy (s. 10). Effect may now be given to writs of *fi fa* judgment and orders of the High Court of Australia against land under this Act (s. 11).

As to caveats, an amendment makes clear that a caveat will only lapse as to the land affected by a dealing lodged for registration, and not completely. Another amendment prevented a caveat lapsing in cases where the transfer, etc. which has caused notice to be sent has been withdrawn. A last amendment obviates the lapse of a caveat where a dealing which would seem to conflict with the caveat has been lodged if the caveator consents in writing to the dealing (ss. 12 and 13).

Power is given to the Registrar to make amendments in Crown grants as well as in Certificates of Title, where applications to bring land under the Act or to amend adjoining titles are involved (ss. 15–18). He is also empowered to require a new certificate to be taken out if he deems it inadvisable to reissue the old certificate (s. 26).

The Commissioner is empowered to make regulations as to the parcels of land that may be included in one certificate of title, as to the quality, size of paper to be used in relation to instruments for registration, as to forms to be used, and persons to be licensed to sell forms (s. 19).

Power is given, too, to the Registrar, if he is of opinion that the production of any documents or evidence or the giving of any notice or the doing of any act is necessary or desirable, then if such documents or evidence or notices are not supplied or given or such act done within such time as he allows—

(*a*) To refuse to complete or proceed with a registration or to do any act or make any entry;

(*b*) Thereupon to return to the person by whom they were lodged, all or such of the instruments, and other documents lodged in connection with the matter, as he thinks fit by delivering the same to him personally or by post; and

(*c*) To forfeit the fees paid as a penalty. In regard to (*c*) it is

also provided that half fees only are to be charged on a subsequent application for the same purpose (s. 22).

Signatures to applications, instruments, or documents which hitherto could legally be affixed in pencil are now required to be made in ink (s. 24).

Persons authorised to attest instruments must now truly state in the attestation clause at what place the instrument was signed by the person whose signature is attested (s. 25).

Intestates Estates.—No. 2863 removes the discrimination of the law against the mother of an intestate person in favour of the intestate's father. By the Statutes of Distribution, where an intestate leaves no issue, his father, if living, took the estate subject to the widow's right to a moiety, and only if the father was dead did the mother share in the estates, and then only on an equality with any brothers and sisters of the intestate. The new Act provides that when a person dies intestate, leaving a father and a mother, but no issue, if the whole or any part of the estate of such intestate would now by law be distributable to the father, the same shall be distributable equally to and between the father and mother.

Another change made in the law by this Act is, in the case of an intestate who leaves no issue and no father, but a mother and brothers and sisters, and who leaves a small estate not exceeding £500. Instead of the mother in such a case sharing the estate with brothers and sisters or their issue, she is given the whole of such estate absolutely and exclusively.

Execution of Trusts.—No. 2824 extends the provisions of the main Act passed last session to facilitate the execution of trusts during the war by giving to trustees who went on war service power to appoint others to manage the trusts during the war service. The present extension is on the lines of the Imperial Statute 5 & 6 Geo. V. c. 70.

A tenant for life or a person having the powers of a tenant for life under the Settled Estates and Settled Lands Act, 1915, is deemed to be a trustee and capable of delegating by power of attorney the exercise of his statutory powers (s. 2).

An executor or administrator of a deceased person is also deemed to be a trustee, and capable of appointing his co-executor or co-administrator or any other capable person as his attorney (s. 3).

Protection is given (by s. 4) to persons dealing with the attorney and to the Treasurer of Victoria and to the Registrar of Titles by enacting that the acts of the attorney are to be good and valid until revocation of the power has been registered or until the person dealing has actual notice of the revocation or death or other legal incapacity by the trustees. S. 5 makes technical amendments in s. 189 of the Transfer of Land Act, 1915, to obviate the necessity of calling for proof that the principal was alive at the time the power of attorney was filed.

S. 6 declares that where the tenant for life is an infant abroad or on war service, the trustees of the settlement shall have the right to exercise certain powers. If the infant is in fact dead, the acts of the trustees on his behalf would be invalid; but the section validates such acts in favour of any person who had not, at the time the acts were made, actual notice of the death of the infant.

S. 7 declares that the fact that a person is reported or posted as missing, is not to be regarded as notice of death, and he is to be presumed to be alive until actual notice of the death has been received.

War service is defined (s. 8), and the Act is made retrospective in operation (s. 9).

Daylight Saving.—No. 2838 was passed as a piece of legislation concurrent with Acts of New South Wales and South Australia, and provided that for the summer months (the first Sunday in October to the first Sunday in March) Victorian clock time shall be advanced one-hour beyond standard time. The measure was in operation during the summer of 1916–17, and was on the whole unpopular.

Statute Law Revision.—No. 2875 corrects mistakes and slips in a number of the Acts consolidated in 1915, and provides that in future such Acts shall be printed as then amended. No. 2876 makes provision concerning a joint committee of both Houses on Statute Law Revision, which it is proposed to establish as a permanent institution.

Liquor Licensing.—What may be termed the special war legislation of Victoria in regard to the restriction of the sale of liquor began with the Intoxicating Liquor (Temporary Restriction) Act of 1915, No. 2584, by which it was enacted that in licensed houses and restaurants liquor should be supplied only between the hours of 9 a.m. and 9.30 p.m. This Act continued in force from July

1915 until October 1916, when by an amending Act No. 2827 the hour of 6 p.m. was substituted for 9.30 p.m. These provisions are to continue in operation until the end of the session of Parliament next following the termination of the present war, and no longer. They apply to clubs as well as to licensed premises; and the later Act provides that no new club is to be registered. By the Act No. 2855 it has been provided that, in the case of licensed premises and clubs where meals have been supplied, a permit may be granted authorising the consumption of liquor with meals in the dining-room up till 8 p.m. This concession, however, has not been extended to "unlicensed premises," which term includes all premises such as eating-houses and restaurants open to the public; so that in these establishments no liquor may be supplied after 6 o'clock. Except to *bona fide* travellers and lodgers, liquor may be supplied in licensed premises and clubs only in accordance with the foregoing provisions.

For the purpose of compensating licensees to some extent for the drastic curtailment of their hours of trading, the Act No. 2776 was passed in December 1915. By this Act a rebate of portion of the various fees paid for the year 1916 was authorised, and licensees who were not the owners of licensed premises were empowered to apply within a certain time to the Licences Reduction Board for a reduction of rent, where loss had been sustained by reason of the restriction of the hours for the sale of liquor. Where a licensee was a purchaser under an uncompleted contract, he was given similar rights to have the interest upon his unpaid purchase-money adjusted. The Board was authorised to make such adjustment (if any) of the amount of rent, bonus, or other consideration, or the interest so payable as in its opinion, having regard to all the circumstances, was fair and equitable. The amount so determined by the Board is, notwithstanding any agreement to the contrary, to be the amount payable from the commencement of the Act No. 2584 until its termination, or until the expiring of the lease or agreement if this should happen before the termination of the Act. Similar provisions have been made in the Act No. 2855 for further adjustment of rents in consequence of the six o'clock closing introduced by that Act.

In December 1916 was passed Act No. 2855, which is not, except as to special provisions, a temporary enactment, but a general amendment of the Licensing Act, 1915, No. 2683, the principal Act as consolidated in 1915. One of the leading provisions of Act No. 2855

is the alteration of the principle of licence-fees, which by s. 19 of the principal Act were fixed amounts. Henceforth, with the exception of vigneron's and billiard-table licences, the fees are estimated by a stated percentage upon the gross amount of liquor purchased for the premises during the preceding twelve months. In the case of licensed victuallers, the licensed victualler who pays the annual licence-fee may deduct three-eighths of the amount from the owner of the premises; and, where there are intermediate lessees, the deduction is passed on to the ultimate owner.

From and after January 1917 no female except the wife, sister, or daughter of the licensee, the licensee if a woman, or any person registered as a barmaid under the Act, may be employed to serve in the bar of any licensed premises. Provision was made for registration of females who had been within one year before January 1, 1917, employed as barmaids for a continuous period of not less than three months.

The most important changes were made by Part II. of the Act in the postponement of local option, and the abolition of existing licensing courts for the various licensing districts. In 1906, when the systematic reduction of licences was inaugurated, the Licences Reduction Board consisting of three members was constituted. By the Act No. 2068 the Board was to continue its operations until 1916, after which complete local option was provided for. The effect of the new provisions in Act No. 2855 is to postpone the introduction of complete local option for a period of about three years. Meanwhile, the reduction of licences will be continued by the Licences Reduction Board, which nominally has been reconstituted, although its *personnel* is unchanged. A Licensing Court for the whole State has now been constituted by the appointment of three licensing magistrates to deal with all licensing matters. The magistrates so appointed are to hold office for a period of three years, and may be reappointed. The members of the existing Licences Reduction Board have been appointed, and accordingly now constitute the Licensing Court for all districts in Victoria.

As seems inevitable in legislation relating to licensing, the recent legislation is hasty and ill-considered. That the hardships occasioned have not been even more severe, and the anomalies more glaring has been due principally to the Licences Reduction Board, the work of which has been exceptionally intelligent and satisfactory.

5. WESTERN AUSTRALIA.

[*Contributed by* F. L. Stow, Esq.]

Acts passed—20.

The third session of the Ninth Parliament of Western Australia commenced on July 20, 1916, and closed on March 30, 1917. Twenty Acts were passed in the year 1916. Of these, five are money Bills (supply, loan, etc.), one is a Railway Act, and one a rates validation Act, whilst two (relating respectively to the administration of Roman Catholic Church Property and the granting of a special lease for the working of lime deposits at Lake Clifton) would be classed in England as private Acts.

Moratorium.—No. 3 continues the operation of the Postponement of Debts Act, 1914, and empowers the Governor, in proclaiming a moratorium, to discriminate between different classes of persons.

Adoption.—Western Australia, by virtue of an Act of 1896, possesses a legal system for the adoption of children. No. 5 of 1916 enables orders for the adoption of females to be made in favour of unmarried women and widows who are eighteen years older than the adopted child, and in favour of unmarried men or widowers who are thirty years older. It also enables orders for the adoption of males to be made in favour of unmarried men or widowers who are eighteen years older than the adopted child, and in favour of unmarried women or widows who are thirty years older.

Red Cross.—No. 6 enables the West Australian Divisional Committee of the British Red Cross Society to expend the funds raised in the State by means of the movement known as "The Western Australian Bay for the Sick and Wounded," not only for the objects of such Society, but also for the benefit of soldiers and sailors returned sick and wounded to the State, or who have been prevented from leaving the State by injury or sickness suffered on service.

Land Transfer.—No. 8 enables the Registrar of Titles to accept and register, under the Transfer of Land Act 1893, instruments signed by any persons engaged on war service upon the signatures being verified to his satisfaction, notwithstanding any want of the special attestation required by the said Act.

Stamps.—No. 12 amends the Stamp Act, 1882, and imposes additional stamp duties. Amongst other things it renders all

receipts for one pound or upwards (instead of two pounds as formerly) chargeable with duty. It also renders instruments executed for giving effect to gifts *inter vivos* liable to duty as if they were conveyances on sale. The duty is reckoned on the value of the property given.

Income Tax.—No. 15 recalls the case of *Webb* v. *Outrim*.[1] In that case the Privy Council decided that the High Court of Australia was wrong in holding that the State Parliaments could not tax the salaries of Commonwealth officers. But the High Court, secure in the position given it by s. 74 of the Constitution, adhered in the subsequent case of *Commissioner of Taxation* v. *Baxter*,[2] to their former ruling and declined to follow the decision of the Privy Council. The High Court based its judgment on the celebrated American case of *McCulloch* v. *Maryland*,[3] and the converse of the proposition adopted from that case has been held to apply in the United States and also by the High Court in Australia. Consequently the Federal Parliament cannot tax the salaries of State Officials. These officials were, therefore, exempt from the Federal Income Tax Act passed in 1915. This exemption is taken away by the Act now under review, which enacts that the taxation by the Commonwealth of the official salaries of officers of the State residing in the State shall not, if the taxation is not at a higher rate or to a greater extent than is imposed on other salaries of the same amount earned within the Commonwealth, be deemed to be an interference with the exercise of any power of the State.

Wheat.—No. 18 is the Wheat Marketing Act, 1916. It applies to the wheat harvested during the season 1915–16, and its operation may be extended by proclamation to wheat harvested during the season 1916–17. The Act empowers the Governor to appoint a committee to advise the Minister administering the Act.

The West Australian Government is empowered by s. 5 to join with the Government of the Commonwealth and of the States of New South Wales, Victoria, and South Australia in settling the terms of a scheme for concerted action in the marketing of the Australian wheat harvest for the season 1915–16, outlined at a conference between the Prime Minister of the Commonwealth and Ministers representing Western Australia and the three States above-mentioned. This conference was held owing to the transport

[1] 1907 A.C. 81. [2] 4 C.L.R. 1087. [3] 4 Wheat, 316.

difficulties created by the war, and a scheme was formulated thereat for concerted action by the Governments represented for utilising on a fair basis the means of transport available and for the marketing of the harvest on behalf of the growers at prices based on those obtainable on the London wheat market, with certain deductions. For the purposes of this scheme the Minister is given power, whether acting in conjunction with Ministers of the Crown representing the Commonwealth and the States or otherwise, to buy or sell or arrange for the purchase or sale of wheat, and to do all acts, matters, and things necessary or expedient in that behalf. The practical work of purchasing the wheat from the farmers is placed in the hands of agents acting under agreement, which are annexed as schedules to the Act. On acquiring the wheat a certificate is issued to the farmer which entitles him to 3*s*. per bushel, less certain deductions, and he is entitled, on the realisation of the wheat marketed under the scheme, to participate, to the extent of the wheat purchased from him, in the distribution of the net proceeds in excess of 3*s*. per bushel.

By s. 10 the Governor is empowered to prohibit the sale or purchase of wheat for delivery in the State except to or from the Minister, and by s. 11 power is given to annul contracts made before the commencement of the Act for the sale of West Australian wheat or flour for delivery in the State.

Liquor Licensing.—No. 20 amends the Licensing Act and provides that every Australian wine licence renewed in December 1916 shall be renewed for one quarter only. The object of the Act was to make all holders of such licences apply again in March 1917, when a new Act, imposing new conditions, was expected to be in force.

6. NEW ZEALAND.

[*Contributed by* J. CHRISTIE, ESQ.]

The legislation passed by the New Zealand Parliament during the Session which commenced on May 9, 1916, and ended on August 8 following related, with but little exception, to matters having reference to the war.

Pensions.—The War Pensions Act, 1915, was amended by the War Pensions Amendment Act (No. 1), principally with the view

of extending its application and of increasing the benefits receivable under it. The amending Act provides for :

(*a*) Increased privileges by way of pension to the parents of members of the Forces who may at any time prove to the Pensions Board that they have not adequate means of support.

(*b*) The payment of pensions to persons who may be resident out of New Zealand.

(*c*) The grant of a pension to a member of the Forces or to his wife or children without having regard to the means of the claimant apart from such pension. Where application for a pension is made by any other class of claimant, the Board is required to have regard to the means of the applicant in determining whether or not it will grant a pension, and, if so, its amount.

(*d*) Pensions to persons (not being "dependants" of members of the Forces) who may satisfy the War Pensions Board that by reason of the death or disablement of a member of the Forces they have suffered material loss of income or property, and have not adequate means of support.

(*e*) Increased pensions for the children of members of the Forces.

By s. 12 the Governor is authorised to extend the benefits of the Act to the officers and crews of transports as if they were members of the Expeditionary Force. In view of the difficulties and anomalies which might arise out of such an extension, no action has, so far (January 1917), been taken under this section, and in the meantime all such persons (and their dependants) rely, in the event of accident arising out of their employment, upon the relief afforded by the Workers' Compensation Act.

By s. 15 the War Pensions Board is empowered to decline to grant a pension to an applicant who is of notoriously bad character. In any such case the applicant has a right of appeal to a Stipendiary Magistrate.

Discharged Soldiers Settlement.—The Discharged Soldiers Settlement Amendment Act (No. 4) amends the Act of 1915, as follows :

(*a*) S. 3 extend the benefits of the principal Act to persons who, being *bona fide* residents of New Zealand, have served in the

present war otherwise than as members of the New Zealand Expeditionary Force.

(*b*) S. 4 extends the classes of persons to whom financial assistance under the principal Act may be given.

(*c*) S. 5 makes special provision for the acquisition by the Crown of and intended for the settlement of discharged soldiers, and s. 6 authorises the Minister of Finance to raise the sum of £500,000 to be used for the acquisition of such land.

Finance.—Though the Finance Act (No. 7) has little direct reference to the war, most of its provisions may properly be regarded as "War Legislation." It is divided into nine main divisions or "Parts," as follows:

Part I. Land-tax and Income-tax, Part II. Excess-profits Duty. Part III. Public Revenues. Part IV. Banking and Loans. Part V. Aid to Public Works and Other Public Purposes. Part VI. Stamp Duty. Part VII. Public Trust Office. Part VIII. Post-Office Savings-bank Deposits. Part IX. Social Insurance.

Part I. is the annual taxing Act, and fixes the rates of land-tax and income-tax for the year. As a result of war conditions, it has been found necessary, in addition to the rates of income-tax usually charged, to impose a tax equal to 33⅓ per cent. of the normal rates, and also a further tax equal to:

(*a*) Sixpence in the pound on all assessable income over £300, in the case of incomes not exceeding £900 per annum; or

(*b*) One shilling in the pound on all assessable incomes over £300, in the case of incomes in excess of £900.

Part II. imposes an extraordinary income-tax on "excess profits," derived during the financial year, ended on March 31, 1916. The term "excess profits" is defined as being the amount by which the assessable income of the taxpayer for the income year ended on March 31, 1916, exceeds the "standard income." The standard income is in effect either (*a*) the assessable income for any of the three financial years ended respectively on March 31 of the years 1912, 1913, and 1914; or (*b*) an amount to 7½ per cent. of the capital employed by the taxpayer in the production of his income, together with such additional amount (not exceeding £600) as the Commissioner of Taxes deems just and reasonable as remuneration of the personal

exertion of the taxpayer in the production of his income. Within these limits the choice of the standard income is with the taxpayer.

The rate of the tax is fixed at 45 per cent. of the excess profits. Salaries and wages are not subject to "excess profits duty."

Assessments of taxation under these provisions are subject to appeal to a special Board of Appeal, consisting of a Judge of the Supreme Court as President, and two other members appointed by the Governor.

Part III. (Public Revenues) relates wholly to financial matters. It provides for a public loan of £16,000,000 for "war" purposes. In order to encourage persons of small means to contribute, provision is made for the issue by the Postmaster-General of "War Loan Certificates" of a nominal value of either £1 or £10. These War Loan Certificates have been issued for the sums of 16*s.* and £8 respectively, and are to be redeemed five years after their date of issue, at their nominal value.

S. 41 of the Act authorises the Government to issue debentures in lieu of payment in cash of the purchase money or compensation payable in respect of land that may be acquired by the Crown during the war.

S. 42 empowers the Minister of Finance, in case of necessity, to pay interest, on public loans that may be raised by him, at a higher rate than that specified in the "authorising Act."

Part IV. (Banking and Loans) enables the Governor in Council to fix the maximum rates of interest that may be paid on fixed deposits or on moneys invested by way of mortgage of land or otherwise.

The provisions of Parts V., VI., VII. and VIII. are of local interest only.

Part IX. (Social Insurance) has no reference to matters connected with the war. Its object is to extend to friendly societies and their members some of the benefits conferred on contributors to the National Provident Fund (established under the National Provident Fund Act 1910).

S. 68 makes provision for the payment of £4, as a maternity allowance, in respect of the birth of children to members of approved friendly societies.

S. 72 *et seq.* enable friendly societies to become contributors to the National Provident Fund so as to secure pensions from the fund

for their members on attaining the age of sixty years, of amounts of 10, 20, 30, or 40*s.* a week. Contributions to the fund are subsidised from the Consolidated Fund to the extent of one-half of such contributions.

Compulsory Military Service.—The Military Service Act (No. 8) makes provision for the raising, by way of conscription, of reinforcements of the New Zealand Expeditionary Force. The scheme of the Act is as follows :

(1) There is established by the Act an Expeditionary Force Reserve, consisting, with certain specified exceptions, of every male natural-born British subject resident in New Zealand, who is, for the time being, of military age.

(2) The Reserve so established is divided into two classes, known respectively as the First and Second Division.

The First Division consists of all reservists who, on the passing of the Act, were :

(*a*) Unmarried men ; or (*b*) Men who have married since May 1, 1915, except those having children under sixteen years of age by a previous marriage ; or (*c*) Widowers with no children under sixteen years of age ; or (*d*) Men who have been divorced or judicially separated from their wives and who have no children under sixteen years of age.

All other reservists are in the Second Division.

(3) The Government Statistician is required to compile a Register of both Divisions of the Reserve.

The main provisions of the Act contemplate one register for each Division. A supplementary provision enables the Minister of Defence to divide New Zealand into Recruiting Districts, with a separate register for each district.

The basis of the Register (or of the several local registers) is the Register of Men compiled pursuant to the National Registration Act, 1915, and reservists who have not furnished Schedules under that Act are required to supply the Government Statistician with the necessary information to enable him to compile the Register of the Reserve.

(4) As a matter of fact, the Minister has exercised his power of establishing "recruiting districts," and in practice men are called up for service, not from the Reserve as a whole, but from the several local subdivisions of the Reserve.

(5) When men are required for the Expeditionary Force, the Minister of Defence, by warrant under his hand, requires the Commandant of the Defence Forces to "call up" the required number of men from such Division of the Reserve as is specified in the warrant, the number of men required from each local subdivision of the Reserve being also specified. On the issue of such a warrant the number of men required is selected by lot from the proper Division of the Reserve. The selection by lot is made by the Government Statistician, pursuant to Regulations made by the Governor by Order in Council. On being called up the reservist ceases to be a member of the Reserve, and automatically becomes a member of the Expeditionary Force.

(6) Although power is given to the Governor to abolish, by Proclamation, the system of voluntary enlistment (so that the compulsory system would alone operate), this power has not been exercised, and the ballot is resorted to only for the purpose of supplying shortages where a sufficient number of men has not been procured for any reinforcement by voluntary enlistment.

(7) Every man who has been "called up" in the ballot has a right of appeal to a Military Service Board on any of the grounds following, namely:

(*a*) That when called up he was not a reservist; or

(*b*) That when so called up he was a member of a Division or class of the Reserve, the calling up of which had not been authorised; or

(*c*) That by reason of his occupation his calling up for military service is contrary to the public interest; or

(*d*) That by reason of his domestic circumstances, or for any other reason, his calling-up for military service will be a cause of undue hardship to himself or others; or

(*e*) That he was on the fourth day of August, nineteen hundred and fourteen, and has since continuously, been a member of a religious body the tenets and doctrines of which religious body declare the bearing of arms and the performance of any combatant service to be contrary to Divine revelation, and also that, according to his own conscientious religious belief, the bearing of arms and the performance of any combatant service is unlawful by reason of being contrary to Divine revelation.

Employers are entitled to institute appeals on behalf of their employees.

(8) On the allowance of an appeal, the appellant ceases to be a member of the Expeditionary Force, and is returned to the Reserve (except in cases where he has satisfied the Board that he is not properly included in the Reserve).

(9) Provision is made for the constitution of a Final Appeal Board, to hear appeals from the determination of the Military Service Boards; but this power has not been exercised.

(10) Persons exempted from military service on the ground of religious objection may be required to serve in a non-combatant capacity (including work in the Medical Corps and the Army Service Corps).

(11) Failure by a member of the Expeditionary Force to leave New Zealand with the unit to which he is attached (unless through circumstances over which he had no control, or with the leave or by the order of a military officer having military command over him) constitutes desertion. Desertion may be dealt with as an indictable offence, punishable by imprisonment with hard labour for five years.

(12) Severe penalties are imposed on persons attempting to evade their duties under the Act.

War Regulations.—The War Regulations Amendment Act (No. 9) extends the powers conferred on the Governor in Council by the principal Act (War Regulations Act, 1914) which was passed in November 1914 to enable the Governor in Council "to make better provision for the public safety during the present war." The present amendment authorises the making of regulations for the following purposes:

(*a*) The suppression, restriction, or control of enemy trade.

(*b*) The control of enemy property.

(*c*) The delegation of powers by attorneys, agents, trustees, executors and administrators while out of New Zealand.

(*d*) The exercise of powers by attorneys and agents of members of the New Zealand Expeditionary Force notwithstanding notice of the death or incapacity of the donor of the power. In the case of death, the regulations may authorise the continuance of the exercise of the powers until the grant of probate or of letters of administration.

(*e*) For empowering minors (being members of the Expeditionary Force) to execute and grant valid powers of attorney.

(*f*) For modifying certain provisions of the statute law as to the verification of instruments executed out of New Zealand in the case of instruments executed by members of the Expeditionary Force.

(*g*) For restricting and controlling the sale of intoxicating liquor (including the practice of treating), for the suppression of prostitution and the prevention of venereal disease, and for the maintenance of essential industries.

By s. 7 the Acts and regulations (unless sooner repealed or revoked) are expressed to remain in operation during the present war with Germany and for one year thereafter, or for such shorter period thereafter as the Governor may by Proclamation made after the end of the war determine.

War Legislation Amendment.—The War Legislation Amendment Act (No. 13) is a miscellany of enactments having reference to matters connected with the war.

Part I. (Restriction on Increase of Rent) is similar in its provisions to the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 (Imperial) so far as the latter Act relates to rents. It differs from the Imperial Act in several important details. The enactment applies only to dwelling-houses where the annual "standard" rent does not exceed £104. The term "standard rent" is defined to mean:

> The rent at which the dwelling-house was let on the third day of August, nineteen hundred and fourteen, or where the dwelling-house was not let on that date the rent at which it was last let before that date, or in the case of a dwelling-house which was first let after the said third day of August the rent at which it was first let, or means at the option of the tenant only the lowest rent at which the dwelling-house was let at any time between the third day of August, nineteen hundred and fourteen, and the thirty-first day of December, nineteen hundred and fifteen.
>
> Provided that if the standard rent as herein defined, computed for a period of one year, is in any case less than eight per centum of the capital value of the dwelling-house the standard rent computed for the same period shall in lieu of the standard rent as so defined be deemed to be an amount equal to eight per centum of such capital value.

Subject to certain exceptions, the Act makes irrecoverable any

rent charged in respect of a dwelling-house to which it applies, in excess of the standard rent. A landlord is entitled to increase the rent so as to recoup himself for additional expenditure incurred by him in respect of structural alterations of the premises, or so as to cover increased charges in respect of rates and other taxes. A tenant cannot be disturbed in his possession of the premises so long as he continues to pay his rent at the agreed rate (not being in excess of the standard rent) and performs the other conditions of his tenancy, except on the ground (*a*) that he has failed to take reasonable care of the premises; or (*b*) that he has committed waste; or (*c*) that he has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers; or (*d*) that the premises are reasonably required by the landlord for the occupation of himself or of some person in his employ; or that an agreement for the sale of the premises has been duly entered into, to be completed by transfer within one month from the date thereof, and that the premises are required by the purchaser for the occupation of himself or of some other person in his employ; or on some other ground which may be deemed satisfactory by the Court to which an application for the recovery of possession may be made.

Part II. (Land Laws Amendments) makes further provision (following upon legislation passed in 1914 and 1915) for the following purposes:

(*a*) For the making by agents of applications, on behalf of men ordinarily resident in New Zealand, but serving out of New Zealand with the Naval or Military Forces, for areas of Crown land that may be opened for settlement during their absence;
(*b*) Allowing the postponement of payments of principal and interest by purchasers of Crown lands, who may be members of the New Zealand Expeditionary Force.

Part III. (Education Amendment) relates principally to matters affecting the staffing of public schools. It provides for the employment of temporary teachers, and also for the temporary reduction of the scale of teaching staffs as fixed by the Education Act, 1914. The occasion for the amending legislation has been the depletion of school staffs by the enlistment of male teachers for active service.

Part IV. (relating to Government Superannuation Funds)

restores the "Superannuation rights" of certain public officials who resigned from the service with a view to joining the New Zealand Expeditionary Force. The usual procedure has been for the officer to obtain leave of absence, but in some cases the officer formally resigned his position.

Part V. contains a number of miscellaneous provisions. Of these the most important are the following:

S. 18 provides for the compilation of a "Register of Deaths" with respect to persons domiciled in New Zealand who have lost or may lose their lives while out of New Zealand on service in connection with the war.

S. 19 empowers companies, incorporated for the purpose of the manufacture of butter or cheese, to carry on certain cognate industries without first having effected an alteration in their memorandum or articles of association.

S. 28 empowers an indentured apprentice to agree with his master for the completion of the apprenticeship, although it may have been interrupted by the military service of the apprentice.

S. 32 provides for the appointment of temporary officers of the Police Force, who may hold office during the war, and for a period not exceeding twelve months thereafter.

S. 33 enables the Governor to prohibit the use for commercial purposes of any word that may become of special significance by reason of its association with the war. Under this authority the Governor has prohibited the use for purposes of trade or business of the now famous word "Anzac."

S. 34 relates to "soldiers' wills" within the meaning of s. 11 of the Wills Act.[1] It enacts that every will made by a soldier within the meaning of the said s. 11, if sufficient by virtue of that section to dispose of personal estate, shall be sufficient to dispose of real estate also. The section is made to apply to the wills and estates of all soldiers who have died between the commencement of the present war and the passing of the Act.

S. 41 (Contracts for Military Supplies) authorises the Minister of Defence to cancel any contract for the supply to the Crown of goods, wares, or merchandise required in connection with the war, if:

(*a*) Any such goods, wares, or merchandise that may have been

[1] 7 Wm. IV. and 1 Vict. c. 26 (Imperial).

delivered under the contract (whether before or after the passing of the Act) are not in accordance with the terms of the contract; and

(*b*) The contractor, by reason of his failure to supply such goods, wares, or merchandise in accordance with the terms of the contract, has (whether before or after the passing of the Act) wilfully committed a breach of such contract.

Parliamentary Elections.—The Parliamentary Elections Postponement Act (No. 15) prolongs the duration of the present Parliament by one year, unless it is sooner dissolved by the Governor pursuant to powers conferred on him by the Constitution Act.

Legislative Council.—The Legislative Council Amendment Act (No. 17) postpones until January 1, 1920, the coming into operation of the Legislative Council Act, 1914 (providing for an elective Upper House).

General Legislation.—Of the general legislation passed during the Session of 1916 the Land and Income Tax Act (No. 5) is by far the most important. The Act determines the principles upon which assessments of land-tax and of income-tax are to be made; the rates of taxation are fixed from year to year by the annual taxing Acts. The Act (which was drafted by Sir J. W. Salmond, K.C., the Solicitor-General for New Zealand) does not make any material changes in the substance of the law, but represents a complete reconstruction of its form.

It is divided into twelve Parts, as follows:

Part I. Administration. Part II. Returns and Assessments. Part III. Objections to Assessments. Part IV. Valuation of Land. Part V. Ordinary Land-tax. Part VI. Graduated Land-tax. Part VII. Land-tax on Native Land. Part VIII. Income-tax. Part IX. Agents. Part X. Recovery of Tax. Part XI. Penalties. Part XII. General.

Part I. (Administration) provides for the appointment of a Commissioner, and Deputy Commissioner, of Taxes, and of the staff required for carrying out the provisions of the Act. Before entering upon his duties every officer is required to take and subscribe an oath of fidelity and secrecy.

Part II. (Returns and Assessments) imposes upon all taxpayers an obligation to furnish annual returns of income received during

the income-year, and of all land held as at noon on March 31 of each year; and also to furnish such other returns as the Commissioner may from time to time require.

Upon the returns so furnished the Commissioner in each year makes his assessments of land-tax and of income-tax in respect of each taxpayer in accordance with the rates fixed by the annual taxing Act.

Part III. (Objections to Assessments) confers a right of appeal to a Magistrate's Court on taxpayers who object on any grounds of fact or law to the assessment made by the Commissioner. On all questions of law the decision of the Magistrate is subject to appeal to the Supreme Court. On questions of fact there is a similar appeal in cases where the amount of tax *bona fide* in dispute between the taxpayer and the commissioner exceeds £200. On questions of law there is a further right of appeal to the Court of Appeal.

Part IV. prescribes the method of ascertaining the value of the taxpayer's interest in land held by him.

Part V. (Ordinary Land-tax) provides that land-tax shall be assessable on the unimproved value of all land owned by a taxpayer as at noon on March 31 of the year preceding the year of assessment, subject to certain exemptions and exceptions set out in the said Part.

Part VI. (Graduated land-tax) makes elaborate provision for the assessment of a special land-tax imposed, not so much for purposes of revenue, as to prevent (by rendering it unprofitable) the undue aggregation of land by a limited number of holders.

Part VII. makes special provisions as to native lands. No native is chargeable with either ordinary or graduated land-tax in respect of native land in his own occupation. If such land is in the occupation of any person other than the native owner or a trustee for him, the native owner is liable to pay ordinary land-tax at half the rate fixed in respect of European taxpayers. In no case is a native owner chargeable with graduated land-tax.

Part VIII. defines the classes of income in respect of which income-tax is payable, and determines what deductions a taxpayer is entitled to make from his assessable income. Income-tax is not payable in any case, unless the assessable income exceeds £300, and then only in respect of the excess of the assessable income over that amount. In addition, provision is made for exemptions in respect of children under sixteen dependent upon the taxpayer; and further

exemptions are made in respect of amounts paid by the taxpayer by way of insurance on his own life for his own benefit or for the benefit of his wife or children, and by way of contribution made by the taxpayer to any Superannuation Fund.

Part IX. defines who shall be deemed to be "agents" for the purposes of the Act, and imposes on an agent a personal liability for the payment of the land-tax and income-tax of his principal. This liability does not affect the primary liability of the principal. The agent is authorised to retain from time to time out of the moneys of his principal such sums as may reasonably be deemed to be sufficient to pay the tax for which he may become liable on behalf of his principal.

Part X. provides for the recovery by the Commissioner on behalf of the Crown of tax due and unpaid; if any tax remains unpaid for twenty-one days, an additional tax equal to 10 per centum of the unpaid tax is automatically imposed; if any tax remains unpaid for three months, and less than six months, the penal rate is 12½ per cent., and if for more than six months a penal rate of 15 per cent. is imposed.

Part XI. provides for the imposition of fines, not exceeding £100 in any case, on persons who fail duly to make to the Commissioner the returns required by the Act, or who otherwise commit any offence against the Act. In addition to the above penalty, any taxpayer who wilfully attempts to evade the payment of any tax is liable to a penal tax equal to three times the amount of the tax in respect of which the offence is committed.

Part XII. (General) confers certain general powers on the Commissioner for the purpose of rendering the Act operative, and also provides for the making by the Governor of such regulations as may be deemed to be convenient for the administration of the Act or necessary in order to carry its objects into full effect.

Censorship of Cinematograph-films.—The Cinematograph-film Censorship Act (No. 10) provides for the appointment of a censor, by whom every film must be approved before it may be legally exhibited. The approval of the censor is subject to appeal to a Board constituted in a manner to be prescribed by regulations. No film is to be approved if, in the opinion of the censor, it depicts any matter that is against public order and decency, or if its exhibition is for any other reason undesirable in the public interest.

Assisting Development of Fruit Industry.—The Orchard Tax Act (No. 11) imposes a tax on orchards at the rate of 1s. per acre. The tax is collected and recoverable by the Crown, and the net proceeds are made payable to the New Zealand Fruitgrowers' Federation (Limited) for the purpose of assisting in the development of the fruit-growing industry.

7. FIJI.

[*Contributed by* T. J. TURBETT, ESQ.]

Ordinances passed—29.

Sugar Tax.—Ordinance No. 1 imposed a small duty on each ton of sugar exported from the Colony. The tax is purely a war measure, and can be revoked by a resolution of the Legislative Council.

Drugs.—Ordinance No. 2 was passed to enable a commercial firm established in (outlying parts of) the Colony to open a branch business as a pharmaceutical chemist. There is only one chemist's shop in the Colony, and the provisions of that Ordinance will allow this firm to carry on a chemist's business so long as it has a qualified man in charge.

Censorship.—The object of the Publications Control Ordinance (No. 3) is to control the publication of false statements and rumours by means of both press and postal censorship. It has been found necessary to pass this Ordinance owing to the prevalence of false reports which caused considerable anxiety both within and without the Colony. No Ordinance conferring powers similar to the Defence of the Realm Act (Imperial) has been passed in this Colony. The Ordinance is purely a war measure, and will most probably be repealed on the cessation of hostilities. The Governor has power to prohibit by proclamation the passing through the post or the publication in newspapers of certain matters. The Censor can also require the submission of proofs of a newspaper for censorship before publication. The printers and publishers have to make certain returns to the Censor.

Trading with the Enemy.—In No. 4 the Governor's powers as to the appointment of a Controller of Enemy Property are further extended.

Control of Exports and Imports.—Ordinance No. 5 is another war measure, but it is permissible, in the event of a trade war, to continue

its operation beyond the duration of the war. The Governor is given power by proclamation to prohibit the exportation from or the importation into the Colony of any goods of any description. The Collector of Customs has power to refuse to ship goods in certain cases and can forfeit imported goods of enemy origin.

Trading with the Enemy.—Ordinance No. 6 has been founded upon the Hong Kong Ordinances, Nos. 28 and 30 of 1914, and prohibits the carrying on of a trade by an alien enemy, or by a firm having an alien enemy partner or manager, without the permission of the Governor. The Ordinance also gives power for the appointment of a liquidator to wind up such enemy businesses, and all the proceeds therefrom are to be paid into the Colonial Treasury. The claims of British subjects shall be met before the claims of alien enemies in case there is a deficiency in the assets. Power has also been taken in the Ordinance to control any moneys payable to an alien enemy.

Ordinance No. 10 provides for the extension of the restriction relating to trading with the enemy to persons to whom, though not resident or carrying on business in enemy territory, it is by reason of their enemy nationality or enemy association expedient to extend such restrictions. The Ordinance gives the power of prohibition by proclamation to the Governor.

Education.—Ordinance No. 8 repeals all the former legislation on the subject, and establishes an entirely new system, creating a Central Board of Control, viz. the "Board of Education," and also an Education Department, and the establishment of Education Districts. This Ordinance also provides for compulsory education, with a proviso that its provisions shall not apply to children wholly of non-European descent unless the Governor so proclaims.

The Education Amendment Ordinance, 1916, No. 29, amends Ordinance No. 8 by making provision for the levying of an Education rate by the Education Board, and also provides for exempting those persons from the payment of this rate who have been refused admission to any school on account of their religious persuasion, nationality, etc.

Promissory Oaths.—Ordinance No. 16 empowers the Governor to authorise any person to administer the oaths referred to. Formerly, the Promissory Oaths Ordinance required the oath of allegiance and the Judicial oath to be tendered by the Colonial Secretary, and taken in the presence of the Governor.

Summary Offences.—Ordinance No. 18, amongst other things, aims at freeing the towns of native women of loose and immoral character by the term "public resort" being made wide enough to include kava saloons. The provisions of ss. 12 and 30 of the Children Act 1908 (Imperial) have been adopted through the medium of this Ordinance. The punishment of trespass with intent indecently to insult or annoy a female inmate of a house has been enlarged from six to twelve months.

Pensions.—The Widows and Orphans Pension Amendment Ordinance, No. 19, amends the law relating to the granting of pensions to widows and children of deceased public officers and permits certain persons to take advantage of the principal Ordinance, although they are out of time.

Lepers.—Ordinance No. 20 provides for the conditional discharge from Leper Asylums of persons detained therein as lepers. The Ordinance establishes a Board on whose recommendations the Governor may order the conditional discharge of a leper. Lepers thus discharged are required to present themselves every three months for further medical examination, and if they have developed either clinical or bacteriological signs of leprosy, they can be ordered to return to the Leper Asylum.

Naval Discipline.—The Seaman Discipline (Admiralty Transports) Ordinance, No. 22, provides for the maintenance of discipline on board Admiralty Transports whilst in colonial waters.

Native Lands.—The Native Lands (Leases) Ordinance, No. 23, purports to provide against the refusal of natives to renew leases of their land. Should the Governor in Council consider the application equitable, and should the native owners refuse to consent to a renewal of the lease, power is taken to call upon them to pay over to the Government, for the benefit of the outgoing tenant, the then present value of the permanent and unexhausted improvements made on the leasehold during the currency of the lease. The Ordinance also endeavours to put a stop to the business of trading in leases.

Immigration.—The Immigrants (Bonds) Ordinance, No. 27, provides for the giving of bonds by employers in respect of certain immigrants, so as to cover the cost of repatriating or returning to the country whence they came any of the labourers intended to be introduced. Any person failing to comply with the requirements of the Ordinance is liable to a substantial penalty.

8. WESTERN PACIFIC.

Trading with the Enemy.—The Tonga (Alien Enemy Trade Disposal) Regulations, No. 1, provides for the disposal in certain cases of the trade of alien enemies.

In this Regulation " alien enemy " is given a much wider meaning than under the Imperial Acts and Proclamations and includes British or Tongan subjects who were, before naturalisation, enemy subjects, and also persons coming under the operation of Alien Restrictions enactments. The British Agent or Consul is empowered to appoint a liquidator in respect of any business which he is satisfied is under alien influence. The remainder of the Regulation deals with the duties of the liquidator, which are in nearly every respect analogous with the powers of the liquidator in Fiji.

It is amended by the Tonga (Alien Enemy Trade Disposal) Amendment Regulation, No. 9. Slightly more extended powers are given to the liquidator, including a power of search if he has reasonable cause to suspect that there are any books or documents relating to any business in liquidation being hidden away.

A further amendment by the Tonga (Alien Enemy Trade Disposal) Amendment, No. 2 Regulation, No. 14, lays the onus of proof of not being an " alien enemy " on the person denying the same.

Quarantine.—The Solomons (Quarantine) Regulation, No. 3, repeals King's Regulations, Nos. 1 and 4 of 1907, and makes provision to prevent the introduction of infectious or contagious disease into the British Solomon Islands. Power is taken in this Regulation by the Resident Commissioner to proclaim ports to be infected. Wider powers are also given the Health Officer, and in certain cases he may employ force to prevent a breach of quarantine.

Diseases of Animals.—The Solomons Diseases of Animals (Amendment) Regulation, No. 4, amends the Solomon Diseases of Animals Regulation, 1915, by enabling the High Commissioner to bring the Regulation into force either in whole or in part by Proclamation in the *Gazette*.

Licences.—The Solomons Licence Regulation, No. 6, amends the law relating to certain licences in the British Solomon Islands Protectorate.

This Regulation repeals King's Regulation No. 3 of 1897, which

was out of date. The former Regulation imposed a capitation tax and ship and trading taxes; the capitation tax has now disappeared. The ship licence is retained in a modified form—a distinction being made between "trading" and "recruiting labour." The Regulation is very similar in other respects to the Fiji Licensing Ordinance, 1911.

Currency.—The Solomons Government Currency Notes Regulation, No. 10, provides for the issue of Government Currency Notes in the British Solomon Islands Protectorate. This Regulation is an exact replica of Fiji Ordinance No. 30 of 1913.

Labour.—The Solomons (Labour) Amendment Regulation, No. 12, amends the Solomons (Labour) Amendment Regulation by making express provision for the payment of deceased labourers' wages to the Resident Commissioner, who shall dispose of the same for the benefit of the deceased relatives. Under this Regulation the payment of the balance of the wages due to labourers on the completion of their contract must be paid over in the presence of an Inspector of Labourers.

Marriage.—The Registration of Ministers for Celebrating Marriages (Amendment) Regulation amends Queen's Regulation No. 1 of 1896. This Regulation is exactly similar to the Gilbert and Ellice Ordinance dealing with the same matter.

9. THE GILBERT AND ELLICE ISLANDS.

Ordinances passed—72.

Control of Exports and Imports.—Ordinance No. 1 regulates the exportation and importation of goods.

This Ordinance is purely a war measure, and empowers the High Commissioner to prohibit by proclamation the exportation or importation of goods from or into the Colony.

Foreign Marriage.—Ordinance No. 2 provides for Notices under the Foreign Marriages, 1892, by persons resident in the Colony, and also enables persons in the Colony to avail themselves of Art. 13 of the Foreign Marriages Order in Council, 1913.

Patents.—Ordinance No. 3 empowers the High Commissioner to grant privileges in the Gilbert and Ellice Islands to persons to whom letters patent in respect of inventions have been granted in the United Kingdom.

Prisons.—Ordinance No. 4 regulates the supervision and discipline of gaols and prisons in the Colony. This Ordinance is based on the Fiji Prisons Ordinance, 1913, and embodies all its principal provisions, with the exception of certain extra provisions which have been framed to meet local requirements. Provision is also made for Colonial "gaols" and for native island "prisons," the latter being intended mainly for short-term prisoners. The consent of the Resident Commissioner is required for the infliction of corporal punishment in the Colony's gaols, and the presence of a medical officer is required in all cases.

Trading with the Enemy.—Ordinance No. 5 provides penalties for trading with the enemy and extends the restrictions relating to trading with the enemy to persons to whom, though not carrying on business in enemy territory, it is thought by reason of their enemy nationality or enemy associations, expedient to extend such restrictions.

Quarantine.—Ordinance No. 7 amends the Gilbert and Ellice (Quarantine) Regulation, 1909, by providing that the High Commissioner may at any time by proclamation declare that any port shall cease to be a port of entry.

Liquor Control.—Liquor Ordinance No. 8 prohibits the supply of intoxicating liquors to natives of the Pacific islands. The High Commissioner is empowered under this Ordinance to grant a certificate of exemption to a native.

Import Duties.—Ordinance No. 11 amends the Gilbert and Ellice (Import) Duties Amendment Ordinance, No. 6, by providing for the exemption from duty of imports by the Pacific Cable Board and also in those cases where the Resident Commissioner is satisfied that goods on which import duty has been paid have been used in connection with any work of public utility.

IV. SOUTH AFRICA.

1. UNION OF SOUTH AFRICA.

[*Contributed by* E. L. MATTHEWS, ESQ., K.C., C.M.G.]

Acts passed—49.

The Union Parliamentary session in which the Acts of 1916 were passed was as long as it was fertile. It was the first meeting of the new Parliament after the general election of October 1915. The first sitting was in the middle of November 1915, but after some three weeks an adjournment took place till the middle of February, and from that time sittings were almost continuous until the prorogation on June 17, 1916. During those three weeks, so far as legislation was concerned, only the preliminary stages of bills were taken; but after the adjournment, progress was continuous and very little of the Government's programme was left uncompleted at the prorogation.

The completed part of this programme may be classified under four headings:

(1) Consolidating, unifying and administrative legislation;
(2) Financial legislation;
(3) Special War legislation;
(4) Miscellaneous legislation.

Miscellaneous.—While it will be convenient first to deal with the legislation which falls under the fourth heading, it is not proposed to make special reference to more than three statutes, the remainder being either of very local interest or effecting minor administrative alterations in existing laws.

Among the most important of the miscellaneous statutes of 1916 is the Railway Board Act (No. 17), which interprets the provisions of s. 125 and other sections of the South Africa Act, 1909. S. 125, while it created a permanent board of railway commissioners, left the powers and functions of that body very ill defined. It laid down that the railways, ports and harbours of the Union should be controlled and managed *through* a board subject to the authority of the Governor-General. The interpretation of these provisions from the outset naturally gave rise to considerable differences of opinion. Was the board an advisory or an executive body?

If the former, was the responsible Minister under any legal or constitutional duty to consult it on any matter of railway policy or administration, and if so, on what matters? If the board was an executive body, and if the Minister holding the railway portfolio was merely one of its members liable to be outvoted, how could he be made answerable in Parliament, and to the public, for the administration of his department? That department employs over 50,000 persons, is responsible for almost all means of internal communications and the gates of external communication, whether for passengers or merchandise; controls a vast undertaking which the Act of Union directs to be carried on, on business principles; and by means of harbour and wharfage dues, railway freights and other charges, it controls also the machinery for a large amount of indirect taxation—taxation which is not submitted for the specific approval of Parliament.

Under these circumstances the natural tendency from the date of Union (*i.e.* from the date of the board's creation) was that the Minister who had to meet Parliamentary interrogation and criticism in regard to the administration of the railways and harbour should treat the board merely as an advisory body. No other course was open to him as the Act of Union stood, or would have been tolerated. But the effect of this view was that it tended to frustrate the very object of the board's creation, viz. the separation of railway administration from politics. The new Act purports to interpret those sections of the Act of Union which relate to the railway board, the chief of which is s. 125. It is now definitely laid down that the administration and working of the Union railways and harbours shall be under the control and authority of the Government, and that such control and authority shall be exercised through a Minister of State, who in turn is to be advised by the board. The Minister is to be under the legal duty of consulting the board on all matters of policy concerning the administration and working of the railways and harbours, and in particular on certain specified matters. The board is to be bound by certain specific directions in exercising these advisory functions which relate to railway and harbour construction—functions which are exercisable under s. 130 of the Act of Union. The new Act recognises that the Minister may refuse to follow the board's advice, but if he does so he must record his reasons in the board's minutes of its proceedings, and special atten-

tion must be drawn to this in a report which the board must annually present to Parliament. The board, however, is excluded from interfering with the actual management of the railways, *i.e.* with the running service and with staff matters. Those matters are left to the General Manager subject to the control exercised over that official by the Minister.

Entails on Fidei-commissum.—The next Act to which reference may be made deals with a very different matter, and one of more interest to lawyers. It is the Removal or Modification of Restrictions on Immovable Property Act (No. 2). The general objects of this Act appear from its short title; but to explain those objects satisfactorily it is necessary to state shortly both the Roman-Dutch common law and the local customs of South Africa as to fidei-commissary bequests or entail of landed property. Under the common law, property may be tied up for the benefit of future generations by means of a testamentary disposition known as a *fidei-commissum*, which may be described as a bequest of property with a trust over in favour of a third person. The person who receives the bequest subject to the trust is called a fiduciary, the person in whose favour the trust is created is called the fidei-commissary. The *fidei-commissum* may indicate as fidei-commissaries either specified individuals or members of a class such as "children," "next of kin," or "a family."

In the case of members of a class, a "*fidei-commissum*" often consists of a prohibition to alienate the property—either by sale or by will—out of the class. A prohibition of this kind may extend to the fourth generation and even beyond it (*i.e.* perpetually) if it clearly appears from the will that such was the intention of the testator. Further, under the Roman Dutch law, a fiduciary has no power to sell, or to grant a long lease of, immovable property which is subject to a *fidei-commissum*; and a Court has power to sanction the sale of such property only if the property is perishable and the fiduciary is unable to provide the funds wherewith to preserve it, *e.g.* in the case of a house which is tumbling down. In such a case the Court may give leave to sell the property provided the proceeds are re-invested or secured for the purposes of the *fidei-commissum*. So much for the common law. The large rural landowners of South Africa have always been accustomed to create *fidei-commissa* by wills. The result has been that in many instances landed pro-

perty has been entailed in such a manner as to become, owing to the impossibility of the testator foreseeing the future results, a burden upon those who inherit interests in the property. This has been one of the causes of indigency amongst the descendants, inasmuch as the land could not support them in joint ownership. It may here be mentioned that primogeniture is unknown as a custom of South Africa. Curious results have followed from the inability to remove (otherwise than by special or private Act of Parliament) a *fidei-commissum* created by will. A large estate which, once rural, has become by the growth of a town suburban, and would thus have been of considerable value if cut up into building lots, has been found unable, owing to the restrictions created by a will, to produce sufficient income to pay for repairs, rates and taxes. The Court has always held that it had no authority to vary the terms of a will, even if the variation is shown to be in the interests of the beneficiaries.

The subject of entails was brought before the Union Parliament shortly after the establishment of Union, when the consolidating Administration of Estates Bill was considered. That Bill passed into law in 1913, but the majority of members—and the majority represent the rural community—rejected a clause similar to the Act now passed, and the rejection was in the face of recommendations of a Select Committee which had taken evidence.

The recommendations were :

(1) that any person interested in immovable property which is subject to a restriction imposed by a will or other document might apply to the Court to remove or modify the restriction, on the ground that it would be to the advantage of the heirs or legatees (born or unborn, certain or uncertain) or *to the advantage of the public* generally ;

(2) That the Court may upon the application remove or modify the restriction or make any further or other order which may be just.

The new Act gives effect to these recommendations so far as they relate to the advantage of the heirs or legatees, but it requires the Court to be satisfied as to certain particular facts also, viz. that the shares of individual beneficiaries have become so small that they cannot beneficially occupy or enjoy the property or that, since the will or other investment took effect, there have arisen circum-

stances, materially affecting the value of the property, which were not contemplated or foreseen by the person who created the entail. The Act also insists that in the event of a sale, the proceeds shall be invested in accordance with direction of the court for the benefit of the fidei-commissaries; but immovable property is indicated as the more suitable investment.

The only other Act under the heading "miscellaneous" is the Girls' and Mentally Defective Women's Protection Act (No. 2), which fixes sixteen years as the "age of consent" in every Province of the Union. The common-law age is twelve years; and in the absence of any statute that was the "age of consent" in the Orange Free State. In the other three Provinces, the pre-Union legislatures had passed statutes fixing, in the case of the Cape Colony and Natal, the age of fourteen, and in the case of the Transvaal the age of sixteen. The new Act of course, in addition to fixing the age, creates a definite offence and provides for the imposition of very severe penalties in language similar to like Acts of the United Kingdom. The Act does not alter the common-law offence.

Consolidating, Unifying and Administrative Legislation. — In the session of 1916, the Union Parliament consolidated, co-ordinated and unified for the Union the laws relating to—(1) patents, designs, trade marks and copyright; (2) insolvency; (3) the law relating to the carriage of passengers and goods by railway, and the administration of the department of railways and harbours; (4) the law relating to the care, custody and control of lunatics (or, as they are called in the Act, mentally disordered and defective persons). It also settled the vexed University question by providing for the incorporation of two of the larger colleges as separate teaching universities, and for the inclusion of the remaining university colleges in a federal teaching and examining University as successor of the old examining University of the Cape of Good Hope.

Parliament also during that session consolidated the statutes which provided compensation to those suffering from the occupation disease of miners' phthisis, and considerably increased the benefits payable to the sufferers, and enlarged the circumstances giving rise to the payment of such benefits.

Patents.—The Patents, Designs, Trade Marks and Copyright Act (No. 9), is the first of the co-ordinating Acts passed since Union which are to bring into harmony those laws of the four late colonies

relating to commerce and industries. But the Act aims also at bringing Union procedure and practice in these matters as far as possible into harmony with the procedure and practice of the other Dominions as well as of the United Kingdom, on the same matters.

The laws of each of the late colonies remained of course in force after the date of Union for the areas for which they were enacted. But within twelve months of that date the Government appointed a commission consisting of the late Lord de Villiers (who was then Chief Justice), the Right Honourable Sir James Rose Innes (the present Chief Justice), and the Right Honourable W. P. Schreiner, K.C. (the present High Commissioner for the Union in London). The revision, assimilation and consolidation of the several provincial laws relating to patents, designs, trade marks and copyright were (*inter alia*) specially referred to that commission.

No. 9 of 1916, so far as patents, designs and trade marks are concerned follows, in every principle and in the most important details, the recommendations of the commission. As regards copyright, the commission considered the resolutions passed at the Imperial Conference of 1911, recommended the adoption for the Union of the first alternative resolution and submitted a draft bill substantially identical with the Copyright Act, 1911, of the United Kingdom. The Union Government, however, did not proceed with the Bill, and after consideration determined to adopt the alternative recommendation of the conference, and to adopt the precedent of the Commonwealth of Australia by declaring the Imperial Act of 1911 to be in force in the Union with certain modifications to suit local conditions.

Until the passing of the new Act, the Union inherited from the late Colonies four different systems of acquiring letters patent, or of registering trade marks. As regards the registration of designs the Transvaal and the Orange Free State were without laws. In Cape Colony and Natal provision existed for the registration of designs under Acts of 1894 and 1899. Each of these Acts was in identical terms, which were also the terms of the Designs Chapter of the English Act of 1883. As regards copyright there was no law in the Orange Free State.

In outlining the provisions of the new Union Act it will be convenient first to draw attention to the administrative provisions which are common to the registration of patents—designs—trade-

marks and copyright. The ministerial responsibility for all the offices entrusted with these matters is placed upon the Minister of Justice. Central Registration offices for each of these matters are established at Pretoria, one officer—the registrar—being entrusted with the management of all four offices.

The Act endeavours to meet local convenience as regards patents by compelling the specifications which accompany an application for the grant of a patent (whether provisional or complete specification) to be lodged in quadruplicate. When these are sent to the registrar one set is filed in his office, and the others are sent to the Attorneys-General of the other three Provinces respectively at whose office they may be inspected by the public.

In this connection it may be mentioned that, though the existing provincial laws are repealed, in so far as any such law remains in force for the exercise of rights acquired and the performance of obligations incurred thereunder, the administration of every one of those laws is transferred to the central offices at Pretoria, and the registers kept under those laws will form part of the new registers. As regards patents a complete index subject matter is being prepared, so as to make effective investigation and examination of registers possible.

The effect of the whole of *Chapter I.* of the Act, relating to *patents*, depends on the definition of " patent " as read with the definition of " inventor " both of which definitions are contained in s. 6. The definition excludes from the privileges of this chapter the person who imports an invention into the Union from outside. The definition, however, has to be read also with certain other sections, amongst which is s. 41. Under that section the grant of a patent outside the Union is not a bar to the grant to the inventor of the same invention in the Union, provided he applies for his Union patent within twelve months after applying for the patent outside the Union ; and the publication in the Union, or in any other country, or the use in the Union of the patent during that period of twelve months, will not invalidate the patent which he may obtain in the Union. Under another section however (s. 191) this provision, which affords protection to foreign patentees, will not operate in respect of any country which does not by its legislation afford similar privileges to persons residing in the Union. When such reciprocity exists the inventor from outside the Union will have a reasonable

opportunity of obtaining a Union patent for the invention for which he has already obtained a patent in another country.

A person who has obtained a patent under one of the laws of the late colonies—a patent which is in force in the Province for which the law was enacted—will also have the opportunity under the new Act of extending his patent throughout the Union, or to any one or two of the other Provinces, subject to its being ensured that prior rights are protected therein.

The following are the other principal features of Chapter I. of the Act—the Chapter which relates to patents:

1. Opposition to the grant of a patent is to be heard and determined by that division of the Supreme Court which has jurisdiction at the applicant's address for service. (Every applicant must in lodging his application and specifications give an address for service. A foreign applicant must give as an address for service a place within the Union.)

The division of the Court which thus has jurisdiction, may, on grounds of convenience to the parties or to others, remove the matter for determination by any other division.

2. A patent when once granted is to be sealed as soon as possible, and not later than fifteen months after the date of the application, as from that date it takes effect. In certain circumstances the registrar may allow an extension of time.

3. The duration of a patent is fourteen years, subject of course to the prescribed renewal fees being paid from time to time. A comparatively low scale of renewal fees has been adopted. The registrar may, on receipt of an additional fee, extend the time of payment of any renewal fee for a period not exceeding three months.

4. Every patent granted under the Act is effective throughout the Union, unless any particular Province is especially excepted in the grant.

5. Every patent is assignable and transferable.

6. The duration of a patent may be extended, provided application is made not less than six months before the date of the expiry of the patent. The application is considered by the Court, which must hear the objections of interested parties, take into consideration the nature and merits of the invention, and its value to the public. On consideration of the Court's report the extension is to be granted or refused by the Government.

7. A further patent—called a patent of addition—in respect of an improvement in or modification of the original invention may be granted for the unexpired term of the original invention.

8. A patent which has become void owing to default in paying the renewal fee may, on application and after notice inviting objections, be restored to the register.

9. Revocation of a patent may be ordered on certain grounds, such as fraud, want of novelty, default in making the prescribed payments and on other grounds.

10. After two years have expired from the grant of a patent, and if it is alleged on petition to the Court that the reasonable requirements of the public with regard to the invention have not been satisfied, the patentee may be ordered to grant licences to work the patent on such terms as the Court may think just. Or if the grant of licences would not satisfy the reasonable requirements of the public, the Court may revoke the grant of the patent unless the patentee can give satisfactory reasons for his default. But an order for revocation on such grounds must not be made within three years from the grant of the patent.

The reasonable requirements of the public are to be deemed *not* to have been satisfied if the patentee has not manufactured the patented article to an adequate extent, and supplied it or granted licences to work on reasonable terms, and thereby any existing trade or industry or the establishment of a new trade or industry in the Union is unfairly prejudiced.

11. The Act lays down the procedure, and the jurisdiction of the Court in actions for infringement.

12. While the Crown is declared to be bound by the grant of a patent to the same extent as a subject is bound, the Government or a department thereof may use an invention in the interests of the public service, on terms to be settled, in default of agreement with the patentee, by arbitration. The Government may also, if authorised by resolutions of both Houses of Parliament, direct the Minister to acquire any patent on terms to be likewise determined. In addition, the inventor of any improvement in instruments and munitions of war may assign the invention to the Government, and the responsible Minister may direct that the invention and the manner in which it is to be performed shall be kept secret.

13. Provision is made in the Act that registration and the passing

of a qualifying examination shall be a condition of practising as a patent agent. Admission to the register of patent agents will not give the patent agent the right of audience before the Courts. He may only appear before the deal officially with the registrar, and appear before the law officer who hears appeals from the registrar in administrative matters.

The right of every attorney of the Court to practise as a patent agent without special examination or registration is recognised.

Chapter II. of the Act, which provides for the *registration of designs*, calls for but little special mention. It follows almost verbatim the terms of the "designs" sections of the English Act of 1907 (7 Ed. VII. c. 29). There is, however, one provision (s. 78) which permits the proprietor of a design registered under one of the two provisional Designs laws (Cape and Natal) to apply for the extension of such registration to any other Province; but before granting the application, the registrar must be satisfied that the design is new or original in that other Province or has not been published therein.

Trade Marks.—*Chapter III.* of the Act, which deals with *trade marks*, also follows in the main the legislation of the United Kingdom and the Commonwealth of Australia. The duration of the registration of a trade mark is fixed at fourteen years, but registration is renewable for like periods from time to time on payment of the prescribed fees. The life of an existing trade mark registered under one of the provincial laws, is not altered. Such a trade mark not only retains its original date of registration, but is for all purposes regarded as a trade mark registered under the new Act for the Province or Provinces in which it was registered when the Act came into operation.

The special points in this Chapter to which attention may be called are the following:

(1) The definition of trade mark in s. 96, which is also the definition contained in the English Act.

(2) The particulars; one of which is essential for registration, (s. 99), also follow those of the English Act; but they include one addition thereto; and that is that an essential particular may be "a distinctive word or words not reasonably required for use in the trade." It seemed that the test should not be whether a word is descriptive or not (for many descriptive words are good trade marks, and many non-descriptive words

are bad trade marks). For example, in England the word "Nectar" in connection with "tea" was refused registration because it was held to be a descriptive word, even though it was a word commercially suitable for registration.

(3) The proviso to s. 99 (which must be read in conjunction with s. 105) enacts that a mark which has been used as a trade mark in any Province by the applicant or his predecessor in business for ten years prior to the commencement of the Act, and which has continued to be so used in substantially the same manner up to the date of the application for registration, may be registered as a trade mark in that Province. This proviso has been inserted in lieu of the "old mark" clause relating to marks which do not contain the essential particulars, but which have been used as trade marks before the first trade marks law came into operation.

(4) S. 101 makes colour a matter to be taken into consideration in determining whether a trade mark is or is not distinctive. Except in the Transvaal this is new to South Africa. But this section goes further than the Transvaal clause, which merely permitted the registration of the exclusive right to use a trade mark in particular colours, but did not make limitation as to colour a test of distinctiveness.

(5) While it has not been considered necessary to make any provision as to worker's marks or Commonwealth marks on the lines adopted in Australia, another provision (s. 102) taken from s. 22 of the Commonwealth Act has been inserted, whereby the Minister, if he considers it to be to the public advantage, may permit any Union or Provincial authority, or an association which undertakes the examination of goods in respect of origin, material, mode or conditions of manufacture, quality, accuracy or other characteristic and certifies the result of such examination by a mark used upon or in connection with such goods, to register that mark as a trade mark, although the authority or association may not be a trader or possess any goodwill in connection with such examination.

Copyright.—In regard to Copyright, *Chapter IV.* of the Act follows the form in which the Australian Commonwealth by Act No. 20 of 1912 adopted the Imperial Act of 1911, with the necessary modifications to fit local conditions. The Chapter contains registration pro-

visions, the registration of documents in central registers being an established custom in South Africa and the Provincial Copyright laws having always provided for registration of copyright. But registration is not made a condition of the existence of copyright or of the exercise of rights under the Chapter. Registration will, however, be evidence of proprietorship.

S. 150 of the Act requires the publishers of books and pamphlets first produced in the Union to deliver copies, not only to certain public and Government libraries, but also to the trustees of the British Museum.

Insolvency.—The Insolvency Act (No. 32) co-ordinates the laws of the several Provinces relating to the administration of insolvent and assigned estates, and grafts upon the provisions of those laws some new principles. The parent of all these laws was the Insolvency Ordinance of Cape Colony (No. 6 of 1843) which, with certain amending laws, has been in operation in Cape Colony up to the passing of the new Act. Even after the passing of the Ordinance of 1843 the Cape Courts held that the Roman-Dutch common law was not superseded by it, except in so far as the Ordinance expressly repealed it. From its preamble it would appear that the main intent of the Ordinance was that " the benefit or relief of cession of goods, commonly called *cessio bonorum*, now available to insolvent debtors in Cape Colony, should be abolished," and that insolvent estates therein should be administered under one uniform law. The ordinance proceeded to abolish that benefit or relief. As will be remembered, the principle of the voluntary cession of goods —the *cessio bonorum* of the Roman Law—or " boedelafstand " as it was called in Holland—began to be recognised in that country about the commencement of the sixteenth century, by the grant of " brieven van cessie " by the sovereign on the application of the debtor. The next step was naturally that the courts of Holland acquired the exclusive right of granting such letters of cession, and from that followed the appointment by the Court of a curator to take charge of the debtor's property thus ceded, a matter which would necessarily involve an inventory of the assets and liabilities and hence the general administration of the insolvent's estate. This appears to be the basic principle of all insolvency laws, viz. that honest debtors—those who are debtors owing solely to misfortune—should be protected ; for dishonest debtors were precluded

from taking advantage of a cession of goods. The creditors could, under the common law, oppose the application for confirmation of letters of cession on the ground that the debtor had been acting fraudulently, and could move that he be imprisoned. These were the principles brought into the Cape Colony by the Dutch settlers, and on these principles the Orphan Chamber, which had been established in 1803 to administer the estates of minors and of persons under curatorship, took upon itself the administration of insolvent estates also.

The common law was modified in matters of practice rather than of principle by an Ordinance of 1829, which in turn gave way to the Ordinance of 1843, referred to above. The Ordinance of 1829, passed after more than twenty years of the British occupation of Cape Colony, assimilated English and Roman-Dutch practice, and established the principles on which the modern insolvency practice of South Africa is based. When it was superseded in 1843 by another Ordinance, which subsequently and successively was adopted in each of the other territories British and Dutch, the main principles of the modern insolvency practice had become fully established.

The best explanation of the new Union Act will consist of, first, an enunciation of the main provisions of the Cape Ordinance of 1843 as amended from time to time, and secondly, a summary of the new features contained in the Act. The main provisions of the Cape Ordinance were as follows:

1. The voluntary surrender of an estate for the benefit of creditors and the circumstances under which such a surrender may take place.

2. The circumstances which constitute acts of insolvency. These are:—

(*a*) Departure from the colony with intent to defeat or delay creditors;

(*b*) Remaining absent with like intent;

(*c*) Departure from one's dwelling with like intent;

(*d*) Otherwise absenting oneself with like intent;

(*e*) Not satisfying an order made by competent court or not pointing out sufficient disposable property to satisfy it;

(*f*) Alienating property with intent to defeat or delay creditors or to prefer one creditor over another.

3. The compulsory sequestration of an estate by the Court on petition of a creditor alleging one or more acts of insolvency, and the procedure to be followed (including special provisions as to partnership estates).

4. The effect of sequestration as regards judgments already given against the insolvent, and as regards also actions pending by or against him.

5. The vesting in the Master of the Court by the fact of a sequestration order, of the insolvent's present and future estate, and all his rights of whatsoever nature together with the documents in connection therewith, and the taking away from the insolvent of any power of alienating, mortgaging or pledging his property or of releasing or discharging any claim.

6. The appointment by the Court of a provisional trustee, pending the election of a trustee by the creditors, and subsequently the election of a trustee by them.

7. Meetings of creditors, the procedure thereat and the business thereof; such as proof of debts at the first and second meetings; the election of trustee at the second meeting, the attendance of the insolvent at all meetings unless excused, and his duty to answer questions, give an inventory of his estate and deliver up papers.

8. The special examination, if necessary, of the insolvent by the Court or a commissioner thereof.

9. The ranking of claims in the following order:

(*a*) The principal sums, and interest up to the date of the sequestration order in the case of interest-bearing debts;
(*b*) The sum of non-interest-bearing debts.

10. The application of assets, first in payment of preferential debts and any interest due thereon up to the date of the sequestration order, if such interest is by law entitled to preference; secondly in payment of other capital sums without interest. Thirdly, if there is any residue, in payment of arrears of interest arising since the date of the order.

11. The special provisions as to partnership estates. Where a partnership estate and that of any one or more of the partners' separate estates are contemporaneously under sequestration, the partnership creditors proved against the partnership estate, and the individual

partner's creditors proved against the individual partner's estate. The partnership estate paid the partnership creditors, and the individual partner's estate paid the creditors of that estate. But if the partnership estate was insufficient, its creditors might claim any surplus from the individual partner's estate, while if the individual estate is insufficient its creditors ranked upon the surplus of the partnership estate. The rights of the partnership creditors against a solvent partner at all times remained, and conversely the rights of all solvent partners at all times remained against the insolvent estate of the partnership or of any individual partner whose separate estate had been sequestrated.

12. The duties of the trustee. These were to call in and collect all debts due to the insolvent estate, and to set aside all such payments, alienations and pledges as were declared by law to be void, such as alienations of property made by the insolvent at a time when his liabilities fairly calculated exceeded his assets fairly valued, unless the alienation was made *bona fide* and upon just and valuable consideration. Such alienations were to be set aside in so far as they caused an excess of liabilities over assets, as also undue preferences of creditors and alienations made by an insolvent with the intention of benefiting a person who, not being a creditor, would have become liable as surety for the insolvent if the alienation was in contemplation of insolvency.

The duties of the trustee further included that of selling, after public notice, all property of the insolvent except his wearing apparel, bedding, household furniture, and tools of his trade to a value determined by the creditors; to pay into a bank all moneys exceeding £20; to keep proper accounts of moneys received, and allow creditors to inspect those accounts; to elect whether to adopt or abandon agreements by the insolvent for the purchase of immovable property; to take over the performance of the conditions of any lease which, being determined *ipso facto* by the insolvency, were the subject of an action for damages by reason of the non-fulfilment of the conditions.

13. At the third or any subsequent meeting of creditors, the insolvent might make an offer of composition. When nine-tenths of the creditors in number and value agreed to accept the insolvent's offer, and the acceptance was certified to the Court after oath by the insolvent that he had made a full surrender of the estate, and

had not granted any preference to or entered into an agreement with his creditors, the Court might discharge him, and the sequestration is at an end, subject to certain formalities and to provisions for securing the rights of non-concurring and absent creditors. The effect of the discharge was to release the insolvent from all debts due from him at the time his estate was surrendered or sequestrated.

14. The rendering of his accounts by the trustee to the Master, within six months of appointment, or within such further time as the Court might allow, and provision for lodging objections to the accounts and plan of distribution.

15. Rehabilitation of the insolvent by the Court without the consent of creditors after a lapse of four years from the date of insolvency, provided he had not been convicted of fraudulent insolvency (Act 38 of 1884). By a later Act (No. 23 of 1905) rehabilitation became possible, even for a person so convicted, after seven years had expired from the conviction.

Such were the provisions of the Cape Laws, and subject to the modifications indicated below, they are all incorporated in the new Act, but are re-arranged in modern and concise language.

The laws of the other Provinces differed only in matters of administrative detail, except that in Natal and the Orange Free State, provision existed for the assignment of estates for the benefit of creditors by voluntary deeds of composition, binding on all creditors, if a certain majority approve and certain other conditions are observed.

The principal modifications of the new Union Act are as follows:

1. A new class of act may be regarded as a preference of one creditor over another, and is voidable at the instance of the trustee, but is not necessarily void (s. 27). Such is a disposition made by the insolvent of his property within the six months immediately prior to the sequestration of his estate, if the disposition has had the effect of preferring one creditor over another. The Court may set aside any such disposition if it is shown that immediately after it was made the liabilities of the insolvent exceeded his assets, unless the disposition was made in the ordinary course of business, and was to all appearances not intended to prefer one creditor over another.

2. The alienation by a trader of his business, or of the goodwill or assets thereof (other than a sale of stock in the ordinary course of trade), is made void as against the trustee of the trader's estate

which is sequestrated within six months after the alienation, unless the trader has given public notice of his intention to alienate (s. 33).

3. So much of the common law is modified as recognised certain tacit hypothecations in favour of certain classes of persons, and thus in effect gave such persons a preference in the administration of an insolvent's estate. Subject to rights actually existing when the Act came into operation, no tacit hypothec will give a preference in insolvency, except in the case of the landlord's hypothec for rent; and in that case, the hypothec will confer a preference only for current rent and six months arrears (s. 86).

4. A considerable change has been introduced by ss. 108 to 112 as regards rehabilitations. If by reason of rehabilitation, the assets are to become again vested in the insolvent it is reasonable that the creditors should have the right to oppose his rehabilitation until there has been a final distribution of the estate. Earlier sections therefore divest the insolvent of, and vest in the trustee, not only existing property, but all that may accrue to him during the insolvency. The rehabilitation clauses above referred to, while enabling him to apply for rehabilitation six months after the confirmation of the distribution account, enable the trustee or the creditors to retain rights to assets which have vested in but have not yet been distributed by the trustee.

5. The Act has taken over the provisions of Natal and the Orange Free State relating to deeds of voluntary assignment. Chapter VI. which deals with voluntary assignments by deed, renders such an assignment binding upon all creditors, notwithstanding the opposition of a minority.

The essentials of any such deed of assignment are that the debtor must not be "an insolvent," *i.e.*, his estate must not already be under sequestration. The deed must be signed by the debtor or by some person who could present a petition on his behalf for the voluntary surrender of the debtor's estate, as well as by a creditor who could prove in his insolvency if the estate had been sequestrated, and the deed must also be signed by at least two persons named in it as assignees. If, in executing the deed, there is at least one creditor having a liquidated claim of £50 or there are more than one creditor who have in the aggregate liquidated claims of £100, the assignee takes possession of all the movable property of the debtor. Notice is to be given to registrars of deeds as regards the immovable

property of the debtor. Public notice is to be given of the execution of the deed, and the publication of that notice has the same effect as the publication of a notice to surrender an estate voluntarily. It has the further effect of staying all proceedings for the sequestration of the debtor's estate, unless a creditor obtains from the Court an order setting aside the assignment on the ground that the schedules of the deed do not fully disclose the debts and property of the debtor If no creditor takes any such action, the Master, if satisfied that the deed has been signed by creditors representing three-fourths in value of the claims and three-fourths in number of the creditors, and that all formalities have been complied with, will register the deed. The deed then becomes binding on all creditors whose claims were due or arose before the date of the assignment, whether or not any such creditor assented to it. The effect then is to place the debtor as regards his estate, and as regards legal proceedings by or against him, practically in the same position as if he were an insolvent. The administration and distribution of the estate are then supervised by the Master, questions of preference and priority being determined as in an insolvency.

6. The penal provisions as to culpable and fraudulent insolvency have been recast, and one important addition has been made to them, so as to define what acts on the part of a trader constitute the keeping of proper books, and what acts on the part of any person constitute the keeping of proper records of transactions, where it is alleged that an undue preference has been given or that debts have been contracted without a reasonable expectation of being able to discharge them (ss. 138 and 139).

These are the main additions grafted by the Insolvency Act, 1916, on to the previous laws. The Act contains also several minor innovations, mostly on points of administrative detail, but no useful purpose would be served in indicating them in this review. Perhaps not the least of the useful features of the Act is that its provisions have been classified in Chapters, and arranged in logical order. That was certainly not a feature of the Cape Ordinance of 1843, or of any law founded on it, and enacted for any other parts of South Africa, except possibly the Transvaal Law of 1895.

Railways and Harbours.—The Railways and Harbours Regulation Control and Management Act is No. 22 of 1916, and is a comprehensive consolidating measure to define mainly the legal relations which

are to exist between the public and the railway administration as a carrier of goods and passengers, and as a port and harbour authority. While the Act covers all the operations of the State-owned railways, some of its provisions may be applied to the comparatively few miles of privately owned lines of railway in the South and South West parts of the Cape Province and in Natal.

The Act is not only a measure of convenience, but absolutely a necessity owing to the existence of the Union of South African Colonies. By s. 125 of the South Africa Act, 1909, all railways, ports and harbours belonging to the Governments of the several colonies which entered into Union became vested in the Union Government; that is to say, almost all means of internal communication and all gates of external communication. The Government thus became charged with the responsibility of administering three railway systems and two sets of harbours as one system; and until this Act was passed it had to administer one part of that system under one set of laws and other parts under other sets of law, according as the railways and harbours happened to be in one or other of the late colonies. It is obvious that in those circumstances great difficulties would present themselves to the railway administration, and to the public, in adjusting their relative rights, duties and obligations.

In the drafting of the Act the Government had a useful precedent in the comprehensive statutes passed subsequent to the South African War, when the railways in the two annexed Colonies were placed under the control and management of a body representing the Governments of both those Colonies. They were inland colonies with no coasts, and there was therefore no harbour legislation, but the statutes referred to (the last of which were passed in 1908) formed a more complete code of railway management and carrier law than had hitherto existed in South Africa.

The Cape and Natal both possessed modern harbour laws; the property and powers of harbour boards having not many years before Union been transferred to the respective Governments, harbour boards with advisory functions only being substituted for the former boards.

Before an outline is given of the provisions of the new Union Act, a few words as to the common law relating to the carriage of goods by land may not be out of place. By the Roman-Dutch law the same rules appear to govern the liability of carriers by land as those which

govern the liability of carriers by sea. Both are treated by the text-book writers, as being in the same position as certain other bailees for hire—such as innkeepers and stable keepers. Their liabilities differed from those of ordinary depositaries. Such bailees as carriers and innkeepers are liable for the slightest degree of negligence, and the burden lies on them of showing absence of negligence. On the other hand they are, by the common law, not liable in respect of goods lost or injured through *vis major* or by accidents occurring otherwise than from their own want of care. They have a right of retention corresponding to the lien of the English law, but they have not the corresponding right of sale. Further, unlike the common carrier in England, the carrier under Roman-Dutch law is under no obligation to receive goods for carriage.

All the railway carrier legislation which has been passed in South Africa up to and including the Statutes of 1908 of the Transvaal and Free State, has been in the direction of modifying the common law and assimilating the law of carriage to the modern English statute law.

The Acts of 1908—as does also the new Union Act—in addition to conferring upon the Government in its railway administration wide powers as to the making of bylaws, prescribed the conditions upon which tickets shall be issued to passengers, and the conditions upon which passengers may travel on its railways. The administration's liability in respect of loss of life of—or personal injury to—passengers is limited to circumstances where there has been a lack of ordinary diligence or skill on the part of the administration or its servants.

The Act also provides for the registration of passengers' luggage, and gives the administration a lien on the same for the payment of fares or other charges.

In respect of the carriage of goods the administration must accept liability for *loss or injury* from any cause whatever *except*—

(*a*) Where the owner or consignor accompanies the goods or retains control over them ;
(*b*) In the case of inherent defect, vice or weakness in the goods ;
(*c*) The loss is due to the act of God or the King's enemies or any inevitable superior force or to an act of the law.

But in case of delay the administration only assumes liability

where the delay was caused by want of *ordinary* care or diligence on the part of its servants. Following the precedent of a Natal law of 1884, the Acts of 1908 and the new Union Act permitted the administration to limit its liability by special contract, but not by general notice.

The administration is also, under the Act, given a lien over goods in respect of freight and other charges due to it for the carriage of those goods, and may sell them to defray those charges. It may also refuse to carry dangerous goods, and its liability in respect of the carriage of animals and of articles of special value is limited by scheduled rates of compensation.

So far as ports and harbours are concerned, the Act (Chapter III.) provides for the continuation of the system which existed in Cape Colony immediately prior to Union, whereby a separate advisory board for each port or harbour is appointed to advise the Government as to its management. The boards consist partly of Government nominees and partly of representatives of the local municipal authority and the local chamber of commerce. The Government is directed, however, in making its appointments to a harbour board to have regard to shipping interests, and to the representations of those who pay wharfage, landing and shipping dues. As regards the management of harbours the principle of the Cape law of 1908 is re-enacted, which enabled goods at a harbour to be detained until the landing, wharfage and shipping charges thereon have been paid.

Other Chapters of the Act confer powers of arrest by railway officials for offences on railways premises, and regulate the catering and refreshment business carried on by the administration on its trains and at its stations, and incidentally modify, so far as the railways are concerned, the ordinary laws governing the sale of intoxicating liquor.

Chapter VI. of the Act enables the Government to supervise the management of private railways. The earlier Cape Acts, passed when the few railways were privately owned and before the Government had acquired them, were mainly intended to secure such supervision. This is effected by making those provisions of the Act which relate to Government railways apply to private railways. In addition the Government has the right of inspection of the lines and plant of any private railway whenever information discloses a dangerous condition thereof. In the interests of public safety

the Government may order any repairs to be effected which such inspection shows to be necessary, and may stop traffic on any part of the private railway until its order is complied with.

Among the miscellaneous provisions of the Act are :

(1) Provisions prescribing the conditions under which legal proceedings may be brought against the administration such as notice of action within a specific period of the act or omission complained of, and a prescriptive period within which action may be commenced.

(2) The report by the administration to the Minister of Justice of any accident and the appointment of an independent board to enquire into the cause thereof.

(3) The power to impose differential wharfage dues in favour of persons who have all their goods transported by railway when they might have used road transport.

The reason for this is that railways constructed out of public moneys are frequently constructed in sparsely populated districts, in order to assist in the development of those districts. In those circumstances the administration may reasonably look for protection against competition by itself offering such inducements as will eliminate competing carriers.

(4) The burden is thrown upon the administration, or upon a private railway company (as the case may be), of proving absence of negligence on the part of its servants (*e.g.* the presence in good order of spark arresters) where crops, trees or grass have been set alight by locomotives.

Mental Disorders.—The Mental Disorders Act (No. 38) consolidates with amendments, and unifies throughout the Union, the several laws of the late colonies relating to the detention and treatment of persons of unsound mind. The differences between these laws in three of the Provinces have been very slight, the new Colonies after the South African War having adopted almost *verbatim* the provisions of Act 1 of 1897 of Cape Colony.

The Natal law, however, dated back to 1868, and has been since then practically without amendment. The first point to be noted in connection with the new Union Act is that no use is made in it of the terms " lunacy," " insanity," " lunatic " or " lunatic asylum,"

these expressions being replaced respectively by "mental disorder or defect," "patient" and "mental hospital."

The Act covers all cases of mental disorder or defect where, as a result thereof, the patient—

(*a*) Is incapable of managing himself or his affairs;
(*b*) Is a danger to himself or to others; or
(*c*) Requires care, treatment and control.

The new terminology has necessitated new definitions and a classification of persons suffering from mental disorder or defect. This classification is set out in s. 3 of the Act. Classes I. and II. and those in the first category of Class VII., include those whom the law has hitherto dealt with as "persons of unsound mind," while Classes III. and IV. and the second category of Class VII. include those hitherto treated as "idiots." Classes V. and VI. now for the first time appear in any South African law. Class V. includes the "feeble minded" and those children in whom there exists from birth or an early age such mental defect as to cause permanent incapacity to receive benefit from instruction in ordinary schools. The chief characteristic of Class VI.—"the moral imbecile"—is that, even though evidence of mental defect may be very slight in the member of this class, he has such vicious or criminal propensities that punishment has little or no deterrent effect. The definitions of Classes V. and VI. have been mainly taken from the New Zealand Act of 1911 and from the English Mental Deficiency Act of 1913. The procedure for the committal for treatment of persons in these classes is the same as in the New Zealand Act.

The general effect however of the new Union Act is not that all mentally disordered or defective persons will come under its detention and treatment provisions, but only—

(*a*) Those who are not under proper care, oversight, or control;
(*b*) Those who are being cruelly treated or neglected by relatives or others;
(*c*) Those who have suicidal or criminal tendencies or are in any way dangerous to themselves or to others;
(*d*) Those who are inebriates or addicted to the drug habit.

Among the other important new features in the Act are:

(1) The provisions of s. 7 as to residence of patients in private

dwellings as distinguished from licensed or Government institutions. It is now made clear (and it was not clear under the previous law) that a patient cannot be received into a private dwelling except upon the authority of a reception order issued by a magistrate. No such order can be issued except upon a medical certificate, stating that it is safe and convenient that the patient be so detained in preference to his being detained in a licensed or Government institution. The magistrate, before issuing the reception order, must examine the householder, and satisfy himself that both the householder is a suitable person to receive and take charge of the particular patient and that his dwelling is a desirable place for the patient's treatment.

(2) A commissioner of mentally disordered and defective persons is to be appointed. The commissioner must be a physician who has once been in charge of an institution. His functions are to visit every institution or other place where patients are detained, examine patients therein, receive reports, give directions for discharge or for difference in treatment, and generally supervise and review the cases of all patients.

(3) The furnishing of periodical reports on the mental condition of patients by the person in charge of them, whether the patients are detained in institutions or private dwellings.

(4) The removal of doubtful cases from persons to a licensed or Government institution for further observation, and the abandonment of pending criminal charges against patients as to whose mental state doubts exist.

(5) The furnishing of periodical reports as to persons who are detained after criminal convictions, as in the case of persons detained on a reception order.

(6) The treatment of patients in general hospitals and the legalisation of their detention in such hospitals where it is anticipated that their mental affliction will yield to treatment in a very short time.

(7) The appointment of boards of visitors for licensed and Government institutions, and a detailed definition of the powers and functions of such boards.

In other respects the provisions of the previous Cape, Transvaal

and Free State laws have been re-enacted with minor modifications, but rearranged in logical sequence and classified in Chapters. Questions of doubtful legal interpretation have been settled. One of these minor modifications is that judges, and other judicial officers, must hold their enquiries at the institution where the patient is detained, so as to obviate the necessity of his production in a public court, and prevent the consequent ill effects to him.

University Education.—Acts 12, 13 and 14 of 1916 respectively establish and incorporate the University of South Africa, the University of Stellenbosch and the University of Cape Town. The first named is to be a federal University, of which certain existing University colleges at Pretoria, Johannesburg, Bloemfontein, Pietermaritzburg, Grahamstown and Wellington will be constituent colleges. Most of these colleges are of recent origin, and chiefly serve local needs. The other two Universities are to be single-college Universities (residential and teaching), and are to be formed by the grant of University charters to the large existing university colleges—Victoria College, Stellenbosch and South African College, Cape Town. Each of these colleges has been many years in existence, and is numerically strong.

The last named will, on its incorporation as a University, receive certain donations and bequests of considerable amount from the late Sir Julius Wernher and the late Mr. Alfred Beit, the conditions under which the trustees pay over the moneys being that buildings for a teaching and residential University shall be erected on part of the Groot Schuur estates which belonged to the late Cecil Rhodes and were bequeathed by him to the Government. All three Universities were to be established as from April 1918, the interval between the passing of these Acts and that date being necessary for the preparation of University statutes and regulations. A feature of the Acts is that to some extent they are interdependent. Under each Act and the joint statutes, framed in terms of each Act, there will be a matriculation examination common to all three Universities, and conducted by a joint board on which representatives of the councils of each University will predominate. The other members of the joint board are representatives of the several provincial education departments, and of public and private secondary schools. There is thus eliminated the risk that the governing body of any of the Universities might be tempted to attract numbers to its Uni-

versity by setting a lower examination test for entrance. In addition, the fact had to be taken into consideration that the matriculation examination of the old University of the Cape of Good Hope (an examining and degree granting body, somewhat similar to the old University of London) has been for many years taken by boys and girls leaving the secondary schools irrespective of any intention to continue a course of study or to obtain a degree. That examination had become to some extent the test of general education to those embarking on professional or business careers immediately after they left school, and it was desirable that no sudden change should be effected by abolishing the examination without providing a substitute.

The joint matriculation board will thus conduct an examination which will serve that purpose, as well as an examination qualifying for admission to the two new teaching Universities, and an examination which is preliminary to the examination for degrees in the federal University.

In addition, the new federal University (with its seat at Pretoria) will be able to continue the work of the old examining University of the Cape of Good Hope, by examining for degrees private students *i.e.*, those who have been unable to take a course at a constituent college. Its main function, however, will be the examination for degrees of those students of its constituent colleges who have taken the courses of the constituent colleges. The internal management and the curricula of the constituent colleges, which are governed by existing Acts of Parliament, are not affected by the new legislation constituting the federal University.

While that University will become the universal heir to the old examining University of the Cape of Good Hope, and thus have vested in it all the property of the old University, an exception is made in favour of certain scheduled scholarships, exhibitions and prizes. These are to be allocated amongst the three Universities on the recommendation of the joint commission, which has drawn up their first statutes and the joint statutes common to all—the commission's recommendations not becoming effective until specifically approved by Parliament.

The passing of these three Acts settles—it is hoped—a matter which for some years past has been the subject of great public discussion and controversy, and has been the occasion of more than

one abortive bill, and of enquiry and report by more than one Government commission of experts and men of repute. The Acts will, as regards higher education, tend to reconcile the conflicting interests of dwellers in the coastal and inland provinces, as well as the conflicting views of the leaders of the two races.

Miners' Phthisis.—The Miners' Phthisis Act (No. 44) consolidates the Acts of 1912 and 1914, which provided monetary awards to persons, who by working underground on the Witwatersrand Gold Mines, have contracted miners' phthsis. The new Act, in addition to increasing the amounts of these monetary awards and extending the circumstances in which they are to be made, also makes provision for schemes of land settlement for the incapacitated miners, and for the utilisation of the awards, as far as possible, in establishing the grantees in an outdoor life on small holdings. The Act also provides for the grant of financial assistance to industrial undertakings, which are willing to give employment to the miners incapacitated for mining. Among the other new features of importance in the Act is a system of medical examination of underground mine workers, whereby it is hoped that all persons affected with diseases of the lungs and respiratory organs may, within a reasonable period of time, be eliminated from underground employment on the mines. Thus a medical examination is prescribed for every person seeking for the first time such employment, so as to ascertain whether he is physically fit and free from lung disease, and a periodical examination (every six months) is prescribed for every underground worker in order to detect tuberculosis, or to detect any sign of silicosis (or miners' phthisis) and the extent to which that disease, if present, has developed. Workers found to be suffering from tuberculosis of the lungs are discharged at once, and will receive pecuniary compensation. Such compulsory periodical examinations being prescribed, persons afflicted with that disease, or any other disease of the lungs, are liable to heavy penalties if found employed at underground work, as is also an employer for permitting to work underground a person who has not received the prescribed medical certificate of fitness.

But in order to conduct—or control the conduct of—the several medical examinations prescribed by the Act, a board or bureau of medical practitioners has been established. This bureau consists of seven such practitioners: its work is to secure uniformity in

decision after examination and diagnosis have been made, to lessen the chances of fraudulent claims for compensation, and to carry on research and statistical work in relation to the disease of miners' phthisis.

Financial Legislation.—The financial legislation of the session consists—in addition to thirteen appropriation Acts in the usual forms—(1) of an amendment to the Exchequer and Audit Act; (2) of an Act providing for the issue of local stock in order to raise money; and (3) of four measures comprising the taxation programme for the financial year.

The Exchequer and Audit Amendment Act (No. 31) repeals those provisions of the Act of 1911 which provided for a separate audit of the railway and harbour accounts and relieved the Controller and Auditor-General of that duty. The transitional stage, in which the amalgamation of three railway systems was taking place immediately after the establishment of the Union, has now passed, and with it has ceased to exist any argument in favour of differentiating the audit of railway accounts from the audit of other accounts of public moneys.

The Local Stock (Registration) Act (No. 19) was necessitated by the fact that the General Loans Act, 1911, prescribed that stock could only be issued in the Union if put up to public tender, and that when a tender had been accepted the purchaser received credit therefor in the books kept by the Treasury, the stock so acquired becoming transferable by entries made in those books. The decision to raise, for the first time since Union, a large loan locally necessitated a departure from those provisions. Under the new Act, local stock may be issued at a fixed price, and as registered stock; the stock so acquired and registered is transferable by a written instrument. The stock certificate issued by the Treasury is *prima facie* evidence of the holder's title to the amount of stock specified in the certificate. During the war the stock, as well as other Union Government securities, may be issued on a condition that such securities and the interest thereon are free of all Union taxation present or future.

Taxation.—The taxation programme consisted of:

1. A re-enactment by *Act* 37 *of* 1916 of the increased customs and excise duties imposed in 1915 for one year only. The re-enactment of these increased duties was also for one year only.

2. The re-enactment by *Act* 35 *of* 1916 of the income tax of 1915, which was expressed to be enacted for one year; and the imposition of a super-tax on those incomes of individuals (as distinguished from companies) which exceeded £2,500 a year. This super-tax was also imposed on incomes over that amount received as dividends from those mining companies whose profits, being liable to taxation on profits under the Mining Taxation Act, 1910, were exempt from ordinary income tax. The rate of the super-tax began at one shilling in the pound, and was graduated so as to rise by fractions of a penny until it reached three shillings in the pound on an income of £48,000. The Union Parliament by this Act for the first time attempted the taxation (both by ordinary income tax and by super-tax) of revenue derived from sources outside the Union, viz. from sources in the adjoining native territories, it being assumed of course that the taxpayer is resident within the Union and subject therefore to the jurisdiction of its Courts. The Acts of 1914 and 1915 were incorporated with certain minor amendments in this Act of 1916 for the purpose of assessment and recovery of the income tax and super-tax.

3. The re-enactment by *Act* 34 *of* 1916—also for one year only—of the Special War Levy of £500,000 on the profits of gold mining. Under the ordinary Mining Taxation Act, 1910, a tax of 10 per cent. was leviable on the profits of gold mining. A special war levy of an amount sufficient to raise £500,000 in the year was made under Act 24 of 1915, which was re-enacted, as above indicated, in 1916.

4. The imposition by *Act* 36 *of* 1916 of a duty upon the export of rough or uncut diamonds. This duty was at a graduated rate, beginning at ½ per cent. and going up to 5 per cent., on the value of the diamonds exported. By the Act, however, no duty was payable until the producer's profits exceed 35 per cent. of the value of his output. When that percentage was exceeded the rate of duty was to rise by one-half per cent. for every three-quarters per cent. of such excess until the maximum rate of 5 per cent. was reached.

Special War Legislation.—The Finance Act (No. 42) was in the nature of an omnibus measure to validate the doing of certain acts necessary owing to the abnormal conditions created by the war. It is inevitable that some departure will be made from a strict observance of the Exchequer and Audit Laws and Appropriation Acts when money has to be found urgently for war requirements.

Not only was money spent in anticipation of Parliamentary authority, but was also borrowed in excess of such authority. S. 1 validated acts of that nature. Another section removed temporarily, and for the period of the financial year, the limitation imposed by previous laws on the amount which may be borrowed by the Government without raising money by a publicly advertised loan. By a third section receipts given in the field by members of the military forces in respect of pay are recognised as being, and as having been since the commencement of the war, valid receipts though not stamped as required by the Stamp Duty Act.

A further section removes certain legal difficulties—as well as administrative difficulties—in the use of Union public moneys in the civil administration by the Union Government, and in the military occupation by the Union forces of the territory lately known as German South-West Africa. Union officers both military and civilian, are carrying on the administration of that territory until its destiny is determined by the conclusion of hostilities. Their remuneration still fell on the votes of their Union departments. Under the South Africa Act the consolidated revenue fund and the railway and harbours fund can only be appropriated for Union services. A modification of the Act of Union was necessary to remove these difficulties.

The War Special Pensions Act (No. 29) provided for the grant of pensions to those of South African contingents who have been permanently incapacitated by wounds received, or disease contracted, while on active service, and to the dependants of those who have been killed on such service or died from such wounds or disease. Under the Act, those of the contingents who were members of the public service, or of the railway service, are entitled to receive pensions in the same circumstances as they would receive under the pension laws if their incapacitation had occurred in the course of duty in civilian work, and as a result of carrying out such duty; or they may, in the alternative, elect to receive a pension award on the scales laid down in the Royal Warrant for those of His Majesty's forces who are serving in Europe or elsewhere and are likewise incapacitated. The dependants of those who have been killed or have died are entitled to receive pensions on like conditions.

With regard to those members of the contingents who were not members of the public or railway service, and therefore not potential

beneficiaries under a pension law, and their dependants, the Government is authorised to supplement the award made under the Royal Warrant by the grant of the difference between that award and an amount which they would have received if their cases were pensionable under the South Africa Defence Act, 1912, as members of the Active Citizen Force created by that Act. That Act is amended so as to increase the awards which may be made thereunder.

All the awards made under the Act are chargeable on Union public funds.

Trading with the Enemy.—The Trading with the Enemy Act (No. 39) follows almost word for word the provisions of the English Acts, from the earliest Act in 1914 to that passed in February 1916. The Treasury in the Union takes the place of the Board of Trade in the United Kingdom; and, inasmuch as no officer exists in the Union corresponding to the public trustee in England, power is taken to appoint a custodian of enemy property without any particular official being indicated.

There are certain differences between the Union and the English legislation, the more important of which are as follows:

1. An appeal is allowed to a superior Court against an order made by the Treasury, that a business with enemy association should be wound up or restricted in its activities. The appeal, however, lies only on the question of fact whether the business is carried on wholly or mainly for the benefit of—or is under the control of—enemy subjects, and the appeal must be lodged within three days after the making of the order, and must be set down for argument within a week thereafter.

2. Before selling the immovable property as assets of the business in such a winding up the liquidator must obtain the sanction of the Court.

3. The power to appoint a controller of a business—a power which by the first of the English Acts of 1914 is vested in the Board of Trade without reference to any court of law—is not included in the Union Act, but that power, together with the power possessed by the Board of Trade in England under the Act of 1916 of vesting enemy property in the custodian, is reserved to the Court on application made by the Treasury.

4. Certain special provisions are inserted to ensure that the numerous companies which carry on business in the Union, but are

registered and have head offices or important branches in London, are not dealt with both under the English Acts and the Union Act.

2. CAPE OF GOOD HOPE.

[*Contributed by* G. M. SWIFT, ESQ.]

Ordinances passed—19.

Divisional Councils.—No. 3 amended the General Law by providing for an annual in lieu of a triennial revision of Voters' Lists.

Education.—No. 3 provided for the institution of Examinations to test the ability of Teachers in Public Schools to give instruction through the medium of both English and Dutch, and for the granting of a Certificate in a higher or a lower grade.

No. 5 amended the School Board Act in certain respects, the most important amendment being one empowering a School Board to expend its funds upon the Medical Examination of Pupils.

No. 11 provided for the payment by the State of the school fees of the children of persons on active service, and of persons killed or disabled on active service.

No. 15 has made provision for the discipline of teachers in Government Schools, and in particular specified a number of acts and omissions which should be regarded as misconduct on the part of any teacher.

Shop Hours.—The Ordinance of 1915 was amended by No. 8 to provide against an evasion of the law by chemists, and to remove an anomaly under which shops in different portions of the Municipality of Cape Town closed for the weekly half-holiday upon different days.

Trading Licences.—No. 14 was a consolidating measure, which repealed and re-enacted practically without amendment some twenty-eight existing laws relating to Licences to Trade.

Miscellaneous.—Under this head fall Ordinances to prohibit entertainments calculated to bring any section of the Public into ridicule or contempt; to amend the provisions of the Electric Power Ordinance of 1911; to amend the Cape Municipal Ordinance of 1912, and the City of Cape Town Unification Ordinance of 1913; to amend the Motor Car Ordinance of 1914; and to further amend the Valuation Ordinance of the same year.

3. TRANSVAAL.

[*Contributed by* G. HARTOG, ESQ.]

Ordinances passed—16 (of which 6 were appropriation Ordinances).

Local Government—*Rating.*—By Ordinance 1, the Local Authorities Rating Ordinance 6 of 1912 was materially amended in principle. Under the latter law the Municipal revenue was derived from rates upon land, meaning land and buildings, with a maximum rate of 3*d.* in the £.

Under the new law Municipalities are given the option to rate the "site value only" two years after the law coming into operation. Thereafter improvements may no longer be rated unless Local Authorities decide to continue to rate them. "Site Value" is defined as the capital sum land, or any interest in land (as defined in the principal ordinance), might fetch if offered at the time of valuation for sale on such reasonable terms and conditions as a *bona-fide* seller would require, assuming the improvements—if any—thereon were not made, and "improvements" are defined as the added value given to the land at date of valuation by such improvements.

The definition of rateable property was amended to include the owner's share of claim licences from proclaimed mining land, and also his present and reversionary rights to the surface of such land.

Improvements upon land held under mining title, but used for residential purposes or purposes not incidental to mining, however, remain rateable at site value unless specially exempted by the Local Authority.

As to land *bona-fide* and exclusively used as "agricultural land" (as defined in the principal ordinance) in Municipal areas, the principal law was repealed, and the differentiation between the owner of more than six acres and the owner of less, by which under the principal ordinance the latter got no relief, was done away with. All agricultural land, whatever its extent, is now rateable on half its agricultural value, but may be rated also on the full amount of any *excess* value it may have. Land, or any interest in land, laid out and used for the purpose of sport and recreation, if controlled by rules approved by the Local Authority and not run for profit, is exempt from rating.

As to the amount of the rate, there can be no rate upon improve-

ments until a rate of a penny in the £, called the *Original* Rate, has been first imposed on the site value. If further revenue is needed an *additional* rate on the site value and (*or*) on improvements may be imposed. But so long as both site value and improvements are rated, the total rate may not exceed what 3*d.* in the £ on both taken together would produce. When the site value only is rated, the total rate including the original rate may not exceed 7*d.* in the £.

The Local Authority is given the same right of appeal from the decision of the Valuation Court as was given to the owner or occupier of property by the Principal Law. Lastly there is a clause which declares null and void any provision, existing in any past or future contract, enabling the person primarily liable for rates to pass the burden on to his lessee.

Demolition and Nuisances.—By Ordinance 6 the Principal Local Government Ordinance, 1912, is amended so as to provide greater power to Health Officers to demolish—or otherwise deal with—premises so dangerous to health as to be unfit for human habitation or a danger to inhabitants of neighbouring premises.

Any person aggrieved by a nuisance on any premises is given the same power, etc., for abatement as are given to the Local Authority by the Principal Ordinance.

Town Lands.—Ordinance 9 seeks to prevent Local Authorities from alienating Town Lands, except upon titles permitted by the Ordinance namely: (1) *Leasehold Title* not exceeding twenty years in all; (2) *Freehold Title* subject to an annual charge to be determined for a first period of seven years by public competition at a duly advertised auction, and thereafter at a charge of not less than 4 and not higher than 10 per cent. of the value of such land appearing in the valuation roll in force for the time being, and if not on such roll then on a value to be ascertained either by agreement or by arbitration.

Language.—By Ordinance 15 it is sought to provide for the due use by Local Authorities of both the official languages (English and Dutch) by providing that all notices affecting the public shall be in both languages; that all forms intended for public use shall be available in both languages; that where the information is sought verbally the Municipal Officer addressed shall reply in that one of the official languages in which he is addressed, or get some other officer to reply for him, wherever practicable.

The Town Clerk is made responsible for any contravention and punishable by fine or imprisonment in default of payment, unless he is able to shift the onus of any contravention upon his Council or any member or Committee thereof.

Elaborate provision is made to prevent language fanatics instituting proceedings unreasonably.

Education.—*Teachers' Pensions.*—The Transvaal Teachers' Pension Ordinance (5) established for the first time a Pensions Fund for teachers in Government Schools. Up to that date the only benefits available to teachers were those provided by Act 19 of 1908, *i.e.* either a gratuity not exceeding one year's pay or the return of contributions to a Provident Fund established by that Act, plus interest and profits, if they elected to become contributors. This Provident Fund was constituted of a 3 per cent. contribution from salaries, plus a similar amount from Government. Under the Pensions Ordinance a Pensions Fund is constituted (on a date fixed) by (*a*) *Contributions from members of the regular teaching staff* under thirty-five (if females) and forty (if males) who are appointed on or after the fixed date of 4 per cent. in the case of males, and 6⅔ per cent. in the case of females, of their pensionable emoluments (*i.e.* salary plus quarters and ration allowances). In estimating contributions of officers covered by the Act of 1908, any benefits accruing thereunder are allowed for. Females admitted to the teaching staff at thirty-five or more contribute on a scale rising from 7 per cent. to 8⅓ per cent. (at forty), and males admitted at forty contribute on a scale rising from 4⅕ per cent. to 6 per cent. (at fifty). Except under exceptional circumstances no contributions are allowed from teachers joining the staff after forty (for females) and fifty (for males).

No officers appointed on or after the fixed date may contribute to or receive benefits from the Funds of the Act of 1908.

The method of contribution is by monthly deductions from pensionable emoluments.

(*b*) *Contribution from Government.*—The Provincial Administration contributes on the £ for £ basis plus interest at rates laid down.

Amount of Pension.—The annuity payable under the Ordinance is based on the average pensionable emoluments for the whole period of contribution or for the last thirty years, whichever is the shorter, and is calculated at one-sixtieth of such emolument for each year of

contribution, but contributions must have been made for not less than ten years.

The Age of Retirement, for males is sixty, and for females fifty, but teachers may be retained in the service for further periods (not exceeding one year at a time) up to sixty-five, subject to the approval of the Medical Officer (*i.e.* the Provincial Medical Inspector of Schools).

Officers may, however, be required to retire on pension earlier, viz. at fifty-five and forty-five respectively.

Other Benefits.—Provision is also made for benefits, not exceeding twice the amount of contributions in the case of retirement on the ground of ill-health; abolition of office; marriage in the case of a female officer. In the event of death before or soon after retirement similar benefits or an annuity are provided for the deceased's widow and children, or certain other dependants named in the Ordinance. Lastly, for annuities to officers (or their dependants) retiring or dying from injuries received in discharge of their duties.

Administration.—The Fund is administered by a Pensions Board of three, one being appointed by the Administration, one by the Provincial Council, and one by the Contributors of the Fund.

2. Important amendments to the Principal Act[1] were made by Ordinance 16 of 1916, viz.:

(*a*) By giving power to the Administration to raise in any school district the school age above fifteen, or to raise the standard of exemption above Standard V.

(*b*) To compel attendance at continuation classes of children exempt from attendance at Primary Schools, who are not yet eighteen, or have not satisfactorily passed a seventh standard course or a two years continuation school course, or who are not exempted from attendance by any regulation. Parents and employers are required under penalty to assist in securing attendance at such continuation classes.

(*c*) By giving power to make grants to private schools not run for profit, to an amount not exceeding half the salaries of teachers employed, provided their premises, curriculum, work, and accounts are subject to Government inspection (educational and medical) and approval.

[1] Act 25 of 1907 (Smuts' Act).

(*d*) Provision is made for compulsory medical inspection of pupils and teachers at all schools provided under the Principal Law and their exclusion, on medical grounds, from any such school.

(*e*) An average enrolment of twenty during the year instead of twenty-five, as hitherto, will entitle the establishment of a Primary School.

(*f*) Attendance can now be compelled where a child lives more than three miles from a school and the parent is financially able to contribute, in whole or in part, to the necessary transport or boarding cost.

Taxation.—To meet a deficit two taxing Ordinances were passed in 1916 of a more or less novel nature.

1. The Wheel Tax Ordinance (No. 11) which, for the year 1917, imposed a tax upon the owners of every untaxed wheel and vehicle in the Province. As all vehicles in Local Authority areas are taxed, the Ordinance was in effect a tax upon the rural areas only. The amount of the tax was 7*s.* 6*d.* a wheel, other than bicycles and tricycles for which the tax was 2*s.* 6*d.* a wheel. The owner on payment of his tax receives a metal badge, which he is required to affix to the vehicle taxed.

2. The General Dealers' Licences Ordinance (No. 12) repealed so much of Act 15 of 1909 as related to the rate payable for such licences namely £1 per licence, and imposed a graduated tax based upon the *turnover* "for the year ending December 31, 1916," rising from £1 on a turnover of £1,000 to £90 on turnovers of £300,000 or more. The turnover has to be vouched for by a sworn declaration with—if required—production of the books. The licence is required to be taken out "from and after January 1, 1917," and where a licence is applied for for the first time, or the business has not been in existence for a full year before that date, a flat rate of £5 per annum is fixed, calculated from the first day of the quarter in which it is issued.

Shop Hours.—By the Shop Hours Ordinance (No. 14) the Ordinance of 1914 (a re-enactment of an invalid Ordinance of 1913) was repealed, but in its main principles substantially re-enacted. The principal amendments made were:

(*a*) The reduction of all assistants' hours per day from 9½ to 9

to be completed within ten hours from the commencement of work, except on the one long day per week, when the hours were to remain at eleven, but to be completed within thirteen.

(*b*) The opening hour of certain shops, *e.g.* butchers, dairies and bakers was altered from 4 a.m. to 6 a.m.

(*c*) The closing hour for all shops except refreshment rooms, eating houses, garages, tobacconists, chemists and railway bookstalls was kept at 6.30, but with only fifteen minutes' instead of thirty minutes' grace for serving customers in the shop at 6.30.

(*d*) The long-hour shops (called privileged shops) are limited to the sale only of certain scheduled goods in their extra hours; and, in addition to an attendance register, they are required to keep conspicuously exhibited a time-table showing at the beginning of each week the days and hours each assistant is to work during the seven days following.

(*e*) Assistants at railway bookstalls and refreshment shops are to be given the same hours as other assistants.

(*f*) The law continues to provide for one long day and one half day per week, but the trader is given the option to choose as between Wednesdays and Saturdays on which day he will close at 1 p.m. and on which at 9 p.m. If he decides to close early on Saturday and late on Wednesday he must give written notice to the Shop Inspector, such notice binding him for twelve months.

(*g*) New Year's Eve late closing is abolished, and the closing hour on Christmas Eve altered from 11 p.m. to 9 p.m.

(*h*) The separate Shops' Clause of the 1914 Law, requiring traders who carried on trades with different hours in the same shop to close off the late closing business was not re-enacted.

Motor Vehicle Amendment Ordinance 2 of 1916 made some minor clarifying amendments to the Motor Vehicle Ordinance 6 of 1915.

V. BRITISH INDIA.

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

[*Contributed by* SIR COURTENAY ILBERT, G.C.B.]

Acts passed—15.

Trusts.—The Indian Trusts (Amendment) Act, 1916 (No. 1), amends the Indian Trusts Act, 1882, by prohibiting the investment by trustees in terminable annuities without a sinking fund, authorises investments in other branches of India Sterling stock, and allows trustees to purchase redeemable stock at a premium, subject to certain limitations.

Defence of the Realm.—The Defence of India (Amendment) Act, 1916 (No. 2), repeals and takes the place of the Ordinance of 1915 (No. 3) noticed in the review of legislation of that year.[1]

The Foreigners (Trial by Court Martial) Act, 1916 (No. 3), supersedes a previous Ordinance of the same year, and provides for the trial of foreigners by court martial under rules made in pursuance of the Defence of India (Criminal Law Amendment) Act, 1915, which corresponds to the English Defence of the Realm Act.

Tariff.—The Indian Tariff (Amendment) Act, 1916 (No. 4), raised the general rate of duty on imported articles from 5 per cent. to 7½ per cent. *ad valorem*, reduced the free list, and imposed export duties on jute and tea. The salt tax, which is alterable by executive order, had been increased, and a corresponding increase was made in the duty on imported salt. The rates of import and export duties on each class of articles are set out in the schedule to the Act.

Income Tax.—Under the Indian Income Tax Act, 1866, incomes under Rs. 1000 a year were not taxed, and incomes above that rate were taxed at 5 pies per rupee. The Indian Income Tax (Amendment) Act, 1916 (No. 5), retained the existing exemption of incomes under Rs. 1000, and the existing rate for incomes under Rs. 5,000, but imposed graduated rates for incomes of Rs. 5,000 and upwards. The highest rate, for incomes of Rs. 25,000 and upwards, is 1 anna in the rupee, which would be equivalent to about 1*s.* 3*d.* in the pound sterling.

Ports.—The Indian Ports (Amendment) Act, 1916 (No. 6), makes

[1] *Review of Legislation*, 1915, p. 139.

some minor amendments in the Ports Act of 1908, and requires port authorities to co-operate in measures for the defence of the port.

Medical Degrees.—The Indian Medical Degrees Act, 1916 (No. 7), may be treated as supplementary to the Medical Registration Acts which have been passed by several of the provincial legislatures. It confines to specified authorities the right of conferring, granting or issuing in British India degrees, diplomas, licences, certificates or other documents stating or implying that the holder, grantee or recipient is qualified to practise western medical science, and imposes penalties on unauthorised persons who confer, grant or issue, or hold themselves out as entitled to confer, grant or issue any such degree, diploma, licence, certificate, or other document, and on persons who falsely assume or use medical titles. The Act defines "western medical science" as meaning the western methods of allopathic medicine, obstetrics and surgery, but, not including Homeopathic or Ayurvedic or Unani systems of medicine. The "specified authorities" include universities established by Act of the Governor-General in Council, the State Medical Faculty in Bengal, the College of Physicians and Surgeons in Bombay, and the Board of Examiners, Medical College, Madras. The Act was introduced and steered through the Council by Surgeon-General Sir Pardey Lukis; who, in the course of the debates, gave an interesting account of the private medical colleges which had sprung up at Calcutta.

Presidency Banks.—The Presidency Banks (Amendment) Act, 1916 (No. 8), merely follows the lines of the Indian Trusts Act (No. 1) and authorises Presidency Banks, like trustees, to invest in Indian sterling stock.

Currency.—The Indian Paper (Currency) (Temporary Advances) Act, 1916 (No. 9), is a temporary war measure of the same character as the Act with a similar title noticed in the review of 1915 legislation,[1] and enlarges the powers of dealing with the Paper Currency Reserve.

Enemy Trading.—The Enemy Trading Act, 1916 (No. 10), provides facilities for the payment to public authorities, called custodians, of certain moneys, the payment of which is, or may be, prohibited owing to the war. It is largely based on the English Trading with the Enemy (Amendment) Act of 1914, but differs in

[1] *Review of Legislation*, 1915, p. 133.

making payment to the custodians optional and not obligatory, and in giving power to extend the class of payments authorised beyond payments in the nature of dividends, interest or profits. The Act, like the English Act, gives power to appoint inspectors and to make winding-up orders.

Imports and Exports.—The Import and Export of Goods Act, 1916 (No. 11), is another war measure, superseding an Ordinance to the same effect, and following the lines of English legislation. It gives power to prohibit imports and exports, not only from or to various countries, but from or to various individuals.

Lunacy.—The Indian Lunacy (Amendment) Act, 1916 (No. 12), enables orders to be made, in pursuance of international arrangements, for the reception into lunatic asylums in British India of lunatics residing in the Indian territory of a foreign European race. The immediate object was to facilitate arrangements for the convenience of French settlements in India.

Bills of Exchange.—The Indian Bills of Exchange Act, 1916 (No. 14), follows the English Bills of Exchange Act, 1914, by excusing delay in the presentation of bills where the delay is caused by the war.

Hindu Law.—The Hindu Disposition of Property Act, 1916 (No. 15), takes one into a different sphere of law. In 1872 the Judicial Committee of the Privy Council decided in the Tagore case that under Hindu law a transfer or bequest of property to an unborn person is invalid. The soundness of this decision was widely questioned, and many attempts were made to reverse it or get round it. In 1914 the Madras legislature, by an Act of that year,[1] succeeded in reversing the decision. A measure introduced by Mr. Setalvad into the Governor-General's Legislative Council in February, 1916, sought to extend the operation of the Madras measure to the whole of British India, and to give Mohammedans similar powers of making dispositions in favour of unborn persons. The measure gave rise to an interesting debate, and was referred to a Select Committee, which confined the operation of the Bill to Hindus, and modified its provisions. The measure, as passed on September 27, 1916, declares by s. 2 that, subject to specified limitations and provisions, "no dispositions of property by a Hindu, whether by transfer *inter vivos* or by will, shall be invalid by reason that any

[1] *Hindu Transfer and Bequest Act, Journal*, vol. xiii. p. 30.

person for whose benefit it may have been made was not in existence at the time of such disposition." The limitations and conditions referred to are, in respect of dispositions *inter vivos*, those contained in ss. 13, 14 and 20 of the Transfer of Property Act, 1882, and, in respect of dispositions by will, those contained in ss. 100 and 101 of the Indian Succession Act, 1865. Their substantial effect is to apply the English rule limiting such dispositions to the period of a ife or lives in being and twenty-one years after. The Act does not apply in the first instance to the Province of Madras, where the Madras Act operates, but may be applied to that Province by notification. It may also be applied to the Khoja community in British India, if the Governor-General is of opinion that the community, or any part thereof, desire that its provisions should be so applied. The Khojas, who are mostly to be found in the Bombay Presidency, are partly governed by Hindu law.

2. MADRAS.

Acts passed—5.

Factories and Workshops.—The Madras District Muncipalities (Amendment) Act, 1916 (No. 4), requires permission to be obtained from the Municipal Council for the construction, establishment, or installation of a factory, workshop or workplace in which steam or other power is to be employed, and enables the Council to issue directions for abating a nuisance caused by steam or other power.

The other Madras Acts are of minor importance and merely local interest.

3. BOMBAY.

Acts passed—6.

Municipal Law.—Two Acts, No. 1 and No. 6, make sundry amendments in the City of Bombay Amendment Act, 1888. Among the amendments are provisions against the conversion of building to other purposes without the permission of the Commissioner, and enabling the Commissioner to require the cleansing of " any private street which is overgrown with rank and noisome vegetation or otherwise in an unwholesome or filthy condition," and to prohibit the stabling of animals, or the storing of grain, in dwelling houses. Under the second Act the Bombay Corporation is required to

appoint a schools committee of twelve members for the purpose of giving effect to the provisions of the Act of 1888 as to primary education.

4. BENGAL.

Acts passed—1.

The only Bengal Act passed in the year was an Act passed to amend the Smoke Nuisances Act, 1905.

5. BIHAR AND ORISSA.

Acts passed—3.

Local Taxation.—The Bihar and Orissa (Cess) Amendment Act, 1916 (No. 1), amongst other things, amalgamated the public works with the road cess, and provided for the application of the amalgamated cess to the purposes of district boards and district committees.

Medical Practitioners.—The Bihar and Orissa Medical Act, 1916 (No. 2), established a Council of Medical Registration, and provided for keeping up a register of medical practitioners.

Decentralisation.—The Bihar and Orissa Decentralisation Act, 1916 (No. 3), by means of a schedule amending sundry Acts and Regulations, provides for carrying out the policy of decentralisation in the Province.

6. ASSAM.

Acts passed—2.

Medical Practitioners. — The Assam Medical Act, 1916 (No. 1), is framed on the same lines as the Bihar and Orissa Medical Act noticed above.

Tramways.—The main object of the Assam Local Self-Government (Amendment) Act (No. 2) is to provide for the construction and maintenance of private tramways.

7. UNITED PROVINCES.

Acts passed—2.

Municipalities.—The United Provinces Municipalities Act, 1916 (No. 2), is a bulky Act of 339 sections and 9 schedules, which consolidates with amendments the previous law on the subject of municipalities.

8. CENTRAL PROVINCES.

Acts passed—2.

Medical Practitioners.—The Central Provinces Medical Registration Act, 1916 (No. 1), is another of the provincial Acts for the registration of medical practitioners.

Alienation of Land.—The Central Provinces Land Alienation Act, 1916 (No. 2), imposes restrictions on the alienation of land by members of aboriginal tribes. The Act extends only to areas notified by the Chief Commissioner, and he has the power to determine what bodies of persons in any area are to be treated as aboriginal tribes. A member of an aboriginal tribe cannot, without the sanction of a deputy commissioner, alienate his land permanently except to a member of the same or a different aboriginal tribe. The Act regulates very minutely the form of the temporary alienations by mortgage which members of aboriginal tribes are permitted to make, the legal effect of such mortgages, and the conditions which they may contain. Deputy commissioners are clothed with large powers of revising mortgages. Land belonging to a member of an aboriginal tribe is not to be sold in execution. Civil Courts are not to exercise jurisdiction in matters with which, under the Act, the Chief Commissioner has power to deal, and legal practitioners are not to appear in any proceedings before a revenue officer under the Act. These are some only of the provisions which have been made for the protection of the Gonds and other aboriginal landowners in the Central Provinces. These provisions of the Act have evidently been suggested by, and should be compared with, those of similar measures passed for such regions as the Punjab and Bundelkhand.

9. PUNJAB.

Acts passed—2.

Military Transport.—The Punjab Military Transport Act, 1916 (No. 1), provides for the impressment of animals, vehicles, boats and gear in the Punjab for the purposes of military transport.

Medical Practitioners.—The only other Punjab Act provides for the registration of medical practitioners.

10. BURMA.

Acts passed—2.

Of the two Burma Acts, one deals with Inoculation, amending the Act of 1908, whilst the other makes some small amendments in the law relating to Ferries.

11. REGULATIONS UNDER S. 71 OF THE GOVERNMENT OF INDIA ACT, 1915.

Regulation made—1.

The Arakan Hill District Laws Regulations is merely of local interest.

12. ORDINANCES UNDER S. 72 OF THE GOVERNMENT OF INDIA ACT, 1915.

Ordinances made—8.

Paper Currency.—Three temporary Ordinances, Nos. 1, 6, and 7, dealt with Indian Paper Currency. The first of these was repealed and superseded by the Act (No. 9) of the Governor-General in Council noticed above.

Dutiable Goods and Salt.—Ordinance No. 2 gave power to prevent the clearance for home consumption, whether from a ship or from a warehouse, of dutiable goods the demand for which is excessive having regard to the ordinary course of such transactions, and also to limit or restrict the clearance of salt from saltworks.

Trial of Foreigners.—Ordinance No. 3, relating to the trial of foreigners by court martial, was superseded and repealed by a later Act of the Governor-General in Council.

Trading.—Ordinances 4 and 5, relating to import and export, and to enemy trading, had a similar fate.

Election Inquiries.—Ordinance No. 8 set up a kind of election court by empowering the Governor-General in Council to appoint a Commissioner for holding an enquiry into any matter relating to or connected with any election to the Indian Legislative Council. The Commissioner is to have the powers of a civil court for enforcing the attendance of witnesses and for examining them on oath or affirmation, for compelling the production of documents, and for

issuing commissions for examining witnesses. Witnesses may be required to give criminatory answers, but cannot be prosecuted on them. It will be seen that the provisions are those usually included in English Acts which set up commissions with judicial powers

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VI. EASTERN COLONIES.

1. HONGKONG.

[*Contributed by* C. G. ALABASTER, ESQ.]

Ordinances passed—15.

Money Loan Associations.—The Societies Amendment Ordinance 1916 (No. 1) excluded Money Loan Associations from the provisions of the Societies Ordinance (No. 47 of 1911). These peculiarly Chinese institutions had been recently held to be included within the definition of " Society " in s. 2 of that Ordinance, and, not being registered or exempted under it, it followed that they were unlawful under s. 10. They are harmless mutual savings clubs, formed by friends or clansmen for short periods; and it would be inconvenient to apply to them the provisions of the Societies Ordinance, which is aimed more particularly at the dangerous Triad Society and the many political clubs which have attempted to make Hongkong their headquarters during the revolutions, revolts and disturbances that have successively convulsed China since the year 1911.

Internment of Suspects.—By the False Passports and Suspected Persons Ordinance, 1916 (No. 2), it is made a misdemeanour to possess a false passport, and for enemy subjects to pass under assumed names. Offenders may be tried either summarily or on indictment, and are liable to a year's imprisonment and to a fine not exceeding 5,000 dollars. Section 3 makes it lawful for the Governor-in-Council in his absolute discretion to order to be interned, for the duration of the present war, any person whose behaviour has given reasonable ground for suspicion that he is acting or about to act in a manner prejudicial to the defence of the Colony or to the public safety of any part of His Majesty's Dominions, or who may be found in possession of any letter, document or other article which may give rise to such suspicion.

Incest.—The introduction of the provisions of the Statute 8 Ed. VII. c. 45 into the Colony is effected by the Punishment of Incest Ordinance, 1916 (No. 3). The crime, however, is not prevalent, as the Chinese have the strongest repugnance to the unions of those who are in the remotest degree related, and they would even regard marriage with one who had the same surname as incestuous.

Trading with the Enemy.—By the Trading with the Enemy (Extension of Powers) Ordinance No. 16 (No. 4), which is based on 5 & 6 Geo. V. c. 98, the Governor-in-Council may, by Proclamation, prohibit all persons or bodies of persons, incorporated or unincorporated, resident, carrying on business, or being in the Colony of Hongkong from trading with any persons or bodies of persons, incorporated or unincorporated, not resident or carrying on business in enemy territory or in territory in the occupation of the enemy (other than persons, incorporated or unincorporated, residing or carrying on business solely within His Majesty's Dominions), wherever by reason of their enemy nationality or enemy association it appears to the Governor-in-Council expedient so to do. The Proclamations issued under the Ordinance repeat the names published in the "Statutory Lists" of the Imperial Government.[1]

Marriages.—By the marriage of British Subjects (Facilities) Ordinance, 1916 (No. 5), where a marriage is intended to be solemnised or contracted in the Colony between a British subject resident therein and a British subject resident in the United Kingdom, a certificate for marriage issued by a Superintendent Registrar in England, a certificate for marriage issued by a Registrar, a certificate of proclamation of banns in Scotland, and a certificate for marriage issued by a Registrar in Ireland shall in the Colony have the same effect as a certificate of receipt of notice of marriage issued by the Registrar of Marriages in the Colony. Also where a marriage is intended to be solemnised or contracted in the United Kingdom between a British subject resident in the United Kingdom and a British subject resident in the Colony, a certificate of receipt of notice of marriage may be issued in the Colony in the like manner as if the marriage was to be solemnised or contracted under circumstances requiring a certificate of receipt of notice of marriage and as if both such British subjects were resident in the Colony.

[1] The Trading with the Enemy Amendment Ordinance, 1916 (No. 8), is based on the Statute 5 & 6 Geo. V. c. 105.

Registration of Persons.—The Registration of Persons Ordinance, 1916 (No. 6), requires every person not belonging to the classes excluded (which are specified in the first schedule) to furnish to the Police a return, giving particulars of their name, sex, age, status (whether single, married or widowed), place of birth, nationality, residence, profession or occupation, name of employer, business address of employer in the Colony and nature of his business, and naval, military, volunteer, or police service if any. The First Schedule exempts persons of Chinese race, persons not exceeding eighteen years, and certain other classes of persons who, by reason of their being in the employment of the Crown or Local Government, or in the various naval, military and police forces, are already sufficiently identified. Section 5 gives the Governor-in-Council power to amend in any way whatsoever any of the schedules. So that though when the Ordinance was passed it applied only to a small fraction of the population, the Executive can at any moment change this and make it practically universal. This is merely one instance of a marked tendency of the Legislative Council in recent years to surrender its legislative functions to the Executive Council.

Pharmacy-Poisons.—The Pharmacy-Poisons Ordinance, 1916 (No. 9), drafted by the writer, repeals the Pharmacy Ordinances, 1908–1914, and consolidates and amends the law relating to the Registration of Pharmaceutical Chemists and to the Regulation of the Sale and Use of Poisons.

Tobacco.—The Tobacco Ordinance, No. 16 (No. 10), provides for the taxation of tobacco, cigars and cigarettes.

Arrest. — The Revenue Officers' Power of Arrest Amendment Ordinance (No. 11) substitutes a new schedule for that in the Principal Ordinance (No. 6 of 1913), but the tendency of the Legislative Council to surrender its Legislative functions to the Executive Council is again strikingly illustrated in s. 3, which reads " It shall be lawful for the Governor-in-Council to amend the said Schedule in any manner whatsoever."

War Loan.—The War Loan Ordinance (No. 12) authorises the raising of $3,000,000 by the issue in the Colony of bonds, bearing interest at 6 per cent., which sum is to be placed at the disposal of His Majesty's Government for the prosecution of the present war.

Trustee Investments.—The Trustee Amendment Ordinance,

1916 (No. 13), makes the Local War Loan an authorised investment for Trust funds.

Bills of Exchange. — The Bills of Exchange Ordinance, 1916 (No. 15), is based on the Statute 4 & 5 Geo. V. c. 82, and makes provision in connection with the war with respect to bills of exchange payable outside the Colony.

2. MAURITIUS.

[*Contributed by* H. W. PRICHARD, ESQ.]

Acts passed—25.

Trading with the Enemy.—The Trading with the Enemy (Extension of Powers) Ordinance, 1916 (No. 1), reproduces the Trading with the Enemy (Extension of Powers) Act, 1915 (5 & 6 Geo. V. c. 98), with certain modifications.

The Enemy Property Ordinance, 1916 (No. 2), prohibits payments to enemy subjects by the Custodian of Enemy property.

Pharmacy. — The Pharmacy (Amendment) Ordinance, 1916 (No. 5), allows practising students in Pharmacy of ten years' standing and upwards to pass a modified examination, which is more of a practical than of a theoretical kind, so as to entitle them to act as qualified assistant pharmacists.

Customs.—The Customs (Amendment) Ordinance, 1916 (No. 6), fixes a delay of three months for the removal of goods landed on the quays, and makes it lawful for the Collector of Customs to have them sold by public auction after that period.

Timber.—The Forest Produce Protection (Extension) Ordinance, 1916 (No. 8), provides for the control of dealers in imported timber converted from trees of the same species as trees of indigenous species, and for the repression of larceny of timber.

Weights and Measures.—The Weights and Measures (Amendment) Ordinance, 1916 (No. 11), has for its chief object the enabling of Revenue Officers to prosecute for certain offences against the law dealing with weights and measures, it having been decided that such officers could not prosecute under the Penal Code.

Habitual Criminals.—The Habitual Criminals and Licensed Convicts Ordinance, 1916 (No. 12), facilitates the identification and supervision of habitual criminals. The portion dealing with habitual criminals is borrowed from the Ceylon Ordinance of 1914 with

certain modifications to suit local convenience. Revised clauses are incorporated dealing with convicts out on licence. The original clauses were in the Prisons Ordinance of 1887.

Co-operative Credit Societies.—The Co-operative Credit Societies (Amendment) Ordinance, 1916 (No. 13), allows rules to be made prescribing the conditions under which a Society may enter into contracts for the sale of agricultural products on behalf of such of the shareholders as shall have given their authorisation to the Society.

Public Health. — The Public Health (Amendment) Ordinance, 1916 (No. 15), provides for the removal of vegetable growth, etc., from river courses and banks by the responsible party in cases of small importance.

Pensions.—The Pensions (Amendment) Ordinance, 1916 (No. 16), allows officers on leave of absence in any capacity connected with the War, whether on half pay or without pay, to count the period of leave as though it was on full pay for pension purposes. It also provides that pensioners, temporarily employed in connection with the War, are not liable to have their pensions abated.

Another amending Ordinance (No. 17) provides for the case of officers seconded from a pensionable post for temporary employment in a non-pensionable one. It adopts a practice which obtains in the Straits Settlements and other Colonies.

Diseases of Animals. — The Animal Diseases (Consolidation) Amendment Ordinance, 1916 (No. 18), authorises the landing of animals coming from Great Britain and Ireland if accompanied by an official export certificate. It also empowers the Governor in Executive Council to regulate or restrict the movement of animals in certain defined areas of the Colony during outbreaks of epidemic diseases.

War Loan.—Ordinance No. 24 empowers the Colonial Government to raise a War Loan for the purpose of affording assistance to His Majesty's Government for the prosecution of the present war.

3. STRAITS SETTLEMENTS.

[*Contributed by* A. DE MELLO, ESQ.]

Ordinances passed—26.

Companies. — Two Ordinances (Nos. 8 and 22) amend the principal Ordinance, No. 25 of 1915. The greater part of the first

(No. 8) is intended to elucidate the meaning of the expression "place of business," occurring in s. 287 of the principal Ordinance. S. 7 remedies a defect similar to that which was observed under s. 14 of the (Imperial) Companies Act, 1900,[1] in relation to mortgages created before the coming into operation of the Act, and which was subsequently cured by s. 12 of the Companies Act of 1907.[2] Similarily, s. 23 of the Ordinance of 1915, which did not touch mortgages or charges created before December 10, 1915 (date of the commencement of the Ordinance), is now remedied by the aforesaid s. 7, which permits of the registration, within three months of May 19, 1916 (date of commencement of the new Ordinance) or within twenty-one days after the debt has been incurred thereon, as the case may be, of all mortgages existing on December 10, 1915.

Ordinance No. 22 further amends Ordinance No. 25 of 1915, chiefly in the following, among other, respects, by

(1) Providing that a balance-sheet need not be laid before the statutory meeting (s. 2);
(2) Amending s. 64 (1) and making it clear that (*a*) the annual general meeting must be an ordinary meeting—this is important in connection with s. 29 (1); (*b*) that a balance-sheet must be laid before this meeting[3];
(3) Providing that the statutory meeting shall be deemed to be the first ordinary general meeting (s. 4);
(4) Providing that unclaimed assets of dissolved companies shall be paid to the Official Receiver.

Food and Drugs.—There are two amending Ordinances relating to the sale of food and drugs. The first (No. 7) amends Ordinance No. 15 of 1914, s. 1,[4] by giving additional powers to the Governor by notification to bring the Ordinance into force with regard only to such foods and drugs as may be specified in the notification, thus permitting the application of the law to certain specified articles of food, etc., at a time, and the bringing of it into operation gradually as to all articles of food, etc.

The second of the amending Ordinances (No. 24) further amends

[1] 63 & 64 Vict. c. 48.
[2] 7 Ed. VII. c. 50.
[3] *Cf.* Article 107 of Table A in Schedule A.
[4] See Review of Legislation, 1914, p. 64, and Review of Legislation, 1913, p. 21.

the principal Ordinance of 1914 by prohibiting the importation of skimmed milk, as such milk is unfit to be used as food for infants.

Life Assurance. — No. 11 amends Ordinance No. 33 of 1914 [1] by enacting, at the suggestion of the Board of Trade, that:

(1) All interest due on the securities deposited with the Accountant-General, and paid to the depositing Company, shall be carried by the Company to the life-assurance fund;

(2) When a life-assurance Company transacts any business in addition to that of life-assurance, (*a*) the life-assurance fund shall be invested in separate investments from any other fund; (*b*) two balance-sheets shall be prepared, one for the life-assurance fund (Form A. in Schedule C.), and the other a general balance-sheet (Form B).

Medical Registration. — No. 12 amends Ordinance No. 11 of 1907, in accordance with the suggestion of the General Medical Council of the United Kingdom, by

(1) Empowering the Governor-in-Council to declare what foreign medical degrees will entitle the holders, subject to such conditions as may be prescribed by the Council, to registration on the local register, although such degrees are not registrable on the register of the United Kingdom;

(2) Entitling the holder of any degree of any Medical School in the United Kingdom or British possessions, which entitles the holder to registration on the register in the United Kingdom, to registration on the local register without the necessity of an Order-in-Council permitting such registration.

Midwives. — No. 20 amends Ordinance No. 9 of 1915 in several matters of detail, but principally in the two following respects, calculated to further the objects of the new law:

(1) Diplomas are to be granted to pupil midwives who obtain a higher standard of proficiency than those to whom certificates are given;

(2) A midwife registered in any district will be permitted to practise in any other district in which she is not registered on giving notice of her intention to do so to the Registrar of the latter district.

[1] See Review of Legislation, 1914, p. 60.

Poisons. — No. 6 amends Ordinance No. 10 of 1905 by providing that the importer—as well as the seller—of poisons must be licensed, for reasons analogous to that which requires the importer of arms and explosives under Ordinance IX. of 1913 [1] to be licensed.

4. FEDERATED MALAY STATES.

[*Contributed by* A. DE MELLO, ESQ.]

Enactments passed—28.

Excise. — No. 23 amends Enactment No. 6 of 1915 by (1) prohibiting the retail sales of intoxicating liquor, beer and toddy upon credit (s. 20 A.); (2) by affording further protection to the public from the sale by licensees of toddy-shops of liquor unfit for consumption (ss. 21 A, 21B, 30).

Mining. — No. 11, which amends enactment No. 12 of 1911, owes its origin, so far as the bulk of its provisions is concerned, to the increased importance of and demand for petroleum and its products. It purports to alter the mining law of the F.M.S. in respect of the working of mineral oil, to withdraw oil-mining rights from mining lessees who now possess such rights by implication of law, and not by the express terms of their leases, and to provide that future mining leases, individual licences and prospecting licences not expressed to relate to mineral oil, shall not convey oil rights. Provision is made (s. 4A) for the issue of oil-mining titles, and the rights, covenants and conditions which are ordinarily to be implied therein (s. 16A.) are specified.

Power is also provided to authorise prospecting for oil over alienated land (ss. 46A, 49, 50), to authorise the laying of pipes to convey oil over State land or alienated land (s. 68A.), and to make rules with regard to oil works and refineries (s. 68B.).

Ss. 19, 20, 23 and 24 deal with the jurisdiction of the Court of a Warden of Mines, and appeals therefrom, and are intended to remove certain inconsistencies resulting from alterations made in the previous law by the Mining Enactment of 1911, and to subject the jurisdiction vested in Wardens by s. 132 of the existing law to a general right of appeal to the Supreme Court.

Sanitary Boards. — No. 13 repeals the State Enactments of 1907

[1] See Review of Legislation, 1913, p. 16.

on the subject, and, apart from the formal alterations due to the incorporation of the two additional sections (ss. 7A. and 11A, now represented by ss. 8 and 13 respectively) enacted by Enactments No. 4 of 1911 and No. 27 of 1914, the only new feature in the Bill is the section (4 *j*) empowering Sanitary Boards to pass By-laws for the regulation of Motor garages.

As in the case of the Straits Settlements, the rest of the Enactents passed during the year are of a purely local, amending, or emergency character.

VII. WEST AFRICA.

1. GAMBIA.

Ordinances passed—41.

Of the Ordinances passed, eighteen were enacted with the object of preparing for the publication of a revised edition of the laws of the Colony by amending existing Ordinances which in certain details were unsuitable or out of date.

There were seven important consolidating Ordinances dealing with the following subjects :

(1) The Gambia Company, West African Frontier Forces ; (2) Customs ; (3) Navigation and Pilotage ; (4) The Police Force ; (5) The Bathurst Police Court ; (6) Firearms, Ammunition, and Gunpowder ; (7) Trade Marks.

2. GOLD COAST.

Ordinances passed—29.

Trading with Enemy. — Ordinance No. 5 follows closely the terms of the corresponding Imperial statute,[1] and its effect is to extend the policy and scope of the local Trading with the Enemy legislation to persons and bodies of persons whose enemy nationality or enemy association may cause business relations with them to be injurious to British interests.

Concessions.—An Amendment Ordinance, No. 11, amends the definition of " concession " in the principal Ordinance by bringing

[1] 5 & 6 Geo. V. c. 98.

within the ambit of that expression sales and leases of land, except of land situated in a town or village from the conveyance of which minerals and precious stones are excepted. Extended powers are conferred on the Governor in Council to exclude from the operation of the Ordinance concessions which it is considered unnecessary to control. The area limitations of the principal Ordinance are extended to options; and three new sections have been added in order to prevent combinations of holders of concessions taking place in such a manner as substantially to form one person, and so holding concessions exceeding the areas allowed by the principal Ordinance to one person.

Medical Practitioners.—An Amending Ordinance, No. 14, provides for the registration in the Colony of practitioners holding British Colonial qualifications which entitle them to registration in the United Kingdom.

Immigration.—Ordinance No. 15 empowers the Government to exercise control over the immigration into the Colony of indentured foreign labourers who are neither of West African nor of European origin or descent.

Patents.—Ordinance No. 18 repeals the former law regulating patents, the Patents Ordinance, 1900, and provides that only inventions patented in the United Kingdom can be patented in this Colony.

Export Duty.—Ordinance No. 19 imposes an export duty on cocoa from the Colony at the rate of one farthing a pound, net weight.

Deportation.—Ordinance No. 20 empowers the Governor to deport from the Colony persons suspected of aiding or communicating with the enemy.

Custodian of Enemy Property.—The Enemy Property Control and Disposal Ordinance, No. 23, follows in the course of corresponding Imperial legislation. The position of the Controlling Officer is partially assimilated to that of the Public Trustee in England, touching the matters to which the Ordinance relates. The Ordinance further provides for the compilation of statistics relating to enemy property, to claims against enemies, and the like, and also for the appointment of a custodian of the property which has been dealt with under the Ordinance.

British Property in Enemy Territory.—The British Property in Enemy Territory and Claims against Enemies Returns Ordinance, No. 29, makes it compulsory on British subjects in the Colony to

make a return to the Controlling Officer of any property they may be entitled to in enemy territory and of any claims they may have against enemy persons or enemy Governments.

3. SIERRA LEONE.

Ordinances passed—14.

Among the more important Ordinances were the following:

European and Asiatic Passengers.—No. 2 introduces a system of registration to secure the accuracy of the statistics of the European and Asiatic population in the Colony and Protectorate.

Trading with the Enemy.—Ordinance No. 3 provides for the extension of the restrictions relating to trading with the enemy to persons not resident or carrying on business in enemy territory.

Ordinance No. 7 provides for the appointment of a Custodian of Enemy Property and for the registration of property and debts.

Customs.—Ordinance No. 4 provides for the more effective control of exports.

Marriage.—The marriage of British Subjects (Facilities) Ordinance, No. 5, facilitates marriages between British subjects resident in the Colony or Protectorate and British subjects resident in the United Kingdom.

Coinage.—The Coin Import and Export Ordinance, No. 6, provides for the regulation of the import and export of coin into and from the Colony and Protectorate.

Nationality.—The British Nationality and Status of Aliens (Fees) Ordinance, No. 5, provides for the collection of fees and the registration of documents under the British Nationality and Status of Aliens Act, 1914.

Naval Discipline.—The Marine Discipline (Transports) Ordinance, No. 11, provides for the discipline of seamen engaged to serve on board Admiralty transports.

4. NIGERIA.

[*Contributed by* E. GARDINER SMITH, ESQ., LL.B.]

Ordinances passed—60.

The amalgamation of the Nigerias[1] entailed a complete revision and consolidation of the laws. This undertaking

[1] See *Review of Legislation*, 1914, p. 173.

was continued throughout 1916, and accounts for most of the legislation of that year. The revised Ordinances are characterised by an exclusion of all matters of detail which can be more suitably dealt with in regulations. Wide powers are given to the Governor-in-Council to make such regulations.

Piers.—No. 6 controls the erection of piers by requiring all piers and wharves, whether in the sea or tidal waters or in navigable inland waters, to be licensed.

Medical Practitioners and Dentists. — No. 7 repeals and re-enacts No. 5 of 1915. S. 13 of the latter ordinance has been re-drafted so as to provide for the formation of a Board of Inquiry to consider cases of misconduct and advise the Governor in Council.

Emergency Legislation.—No. 8 (Trading with the Enemy) extends the provisions of Nos. 12 of 1914 and 4 of 1915 to persons with whom trading is prohibited under 5 & 6 Geo. V. c. 98. No. 52 (Trading with the Enemy (Amendment)) provides that the Governor may require evidence as to the origin of imports or the destination of exports. No. 47 makes provision for a Public Custodian of enemy property, etc.

Shipping.—No. 9 (Passengers Steam Vessels Survey (Amendment)) repeals No. 26 of 1915, and gives wider powers to dispense with the full complement of officers, engineers, etc., required on vessels engaged in the coasting or inland waters trade. It may be regarded as an emergency measure. No. 45 (Admiralty Transport (Discipline)) makes it an offence for a seaman on an admiralty transport to be absent without leave or to be drunk on duty.

Currency.—No. 11 provides for the issue of Currency Notes in Nigeria by the West African Currency Board.

Native Affairs.—No. 14 (Native Authority) follows c. 59 of the Laws of North Nigeria, which enabled Provincial Courts to enforce orders of Native Courts and Chiefs.

No. 51 (Native Labour (Foreign Service)) re-enacts and amends Nos. 1 and 25 of 1913 (South Nigeria). It aims at enabling the Government to control, in the interest of natives of Nigeria, the emigration of native labourers. S. 20 contains new provisions defining the duties of masters of ships in relation to natives seeking to embark as deck passengers.

Criminal Law.—No. 15 establishes a Criminal Code which is a

revision of c. 10 of the Laws of North Nigeria in the light of recent legislation.

The new Code omits Field Imprisonment (s. 17); but introduces flogging for burglary and house-breaking (s. 18 (4) (*b*)).

It is made an offence for a public servant to make a copy of an official document without authority (s. 97 (2)). It also becomes an offence to hand a testimonial to another person to use, or to utter a testimonial so handed (ss. 488, 489). The Code incorporates provisions of the Official Secrets Act, 1911 (ss. 89–96), of the Copyright Act, 1911 (ss. 491–493), of the Prevention of Corruption Act, 1906 (s. 494), and of the Protection of Animals Act, 1911 (ss. 495–499).

No. 22 (Fugitive Criminals Surrender) is a re-enactment. To save the inconvenience of bringing Fugitive Criminals long distances to one of the few Magistrate's Courts, it defines "Magistrate" so as to include certain senior political officers. The powers of these officers, however, are confined to cases affecting natives.

Assessment.—No. 16 amends No. 10 of 1915, and provides *inter alia* for a valuation list being issued in parts, without waiting for the completion of the assessment of the whole place.

British Nationality and Status of Aliens Act, 1914.—No. 17 deals with fees payable in Nigeria under this Act.

Marriage.—No. 18 amends s. 50 of No. 17 of 1914, so as to comply with the requirements of the Foreign Marriage Order in Council, 1913. No. 19 makes such provisions in the marriage laws of Nigeria as are necessary to enable an Order in Council to be made applying the Marriage of British Subjects (Facilities) Act, 1915, to Nigeria.

Wild Animals Protection.—No. 23 consolidates the law, and makes further and better provision for the protection of certain plumage birds.

Motor Traffic.—No. 29 repeals No. 7 of 1913, and provides for the registration and licensing of motor vehicles and the licensing of drivers, and generally for the control of motor traffic. Details are reserved for regulations.

Courts.—No. 33 contains further provisions which experience has shown to be necessary to the efficient working of the system of Provincial Courts, composed of Political Officers. The Ordinance gives the Governor further powers to order a retrial or further

evidence to be taken, or to reduce a sentence. It also makes competent the transfer of a case from a Provincial Court to a Native Court.

Patents.—No. 30 consolidates and amends the law. It confines applications for patents in Nigeria to cases in which letters patent have been obtained in the United Kingdom.

Slavery.—The legal status of slavery was never recognised in Southern Nigeria, and in Northern Nigeria all children born since March 31, 1901, were by Proclamation declared free. No. 35 gives effect to this, and repeals previous laws.

Oaths.—No. 37 (Oaths and Affirmations) re-enacts c. 13 of South Nigeria Laws. S. 2 introduces the new form of oath prescribed by s. 2 of the Oaths Act, 1909, but varies the section of the statute by providing that the old form shall be used unless the deponent elects to take oath in the new form. Natives have been found somewhat obtuse in the kind of repetition required by the new form.

Stamps.—No. 42 consolidates the law and introduces certain provisions of the Stamp Act, 1891. S. 21 introduces the discretion as to costs in a successful appeal against the assessment of the Commissioners contained in s. 13 (4) of the Act. S. 24 (1) provides that adhesive stamps must be cancelled so as to be useless for the purposes mentioned in the Act, or "for . . . any telegram." Ss. 34–38 (Conveyances on Sale) are founded on ss. 54–58 of the Act. Ss. 44–45 (Mortgages) have been altered in accordance with ss. 86 and 88 of the Act.

Customs.—No. 46 (Customs Tariff (Export)) imposes export duties on cocoa, palm-oil, and palm kernels.

Lunacy.—No. 56 consolidates and amends the law. S. 9 provides for the temporary detention of a suspected lunatic on a Medical Officer's certificate. S. 16 empowers a Magistrate to discharge an asylum patient on production of a certificate of sanity. S. 20 makes native communities liable for the expense of keeping any of their members in an asylum. The head of the community may be sued for the amount, and has a right of relief against the members.

Public Officers Guarantee Fund.—No. 57 consolidates and amends the law. *Inter alia* it abolishes the entrance fee. It provides that one year's contribution only shall be made, except the state of the Fund should require otherwise, and also that the

whole, instead of nine-tenths, of an officer's contributions may be refunded.

Miscellaneous.—Among other legislation of the year are Ordinances dealing with Land and Native Rights; Quarantine; Minerals; Forestry; Desertion from Ships; Prisons; Petroleum; Customs; Unsettled Districts; Wireless Telegraphy; Official Oaths; Public Officers Protection; Roads and Rivers; Post Office; Education; Commissions of Inquiry; Naturalisation of Aliens; Cotton-growing and Destructive Pests (Agricultural Ordinance); Lepers; and Telegraphs.

VIII. EAST CENTRAL AFRICA.

1. EAST AFRICA PROTECTORATE.

Ordinances passed—12.

Customs.—No. 6 strengthens the law so as to exclude goods of enemy origin.

Trading with the Enemy.—The Ordinance of the previous year is amended on the lines of English legislation by the appointment of a Custodian of Enemy Property.

Native Property.—Ordinance No. 8 prohibits the sale of fruit-bearing trees and other property owned by natives to any person who is not a member of a native tribe inhabiting such area.

2. UGANDA.

Ordinances passed—13.

Contagious Diseases. — By Ordinance No. 8 the Governor is empowered to prohibit the movements, treatment, handling, or storing of produce or merchandise, so as to prevent the spread of plague, small-pox, cerebro-spinal meningitis, yellow-fever, cholera, beri-beri, leprosy, typhus fever, enteric fever, or other contagious diseases.

Liquors.—No. 9 consolidates and amends the law relating to liquors.

Interpretation of Statutes.—No. 10 is an interpretation ordinance of the usual type.

Auctioneers.—No. 11 provides for the issue of licences to auctioneers, and lays down the conditions for the conduct of auctions.

3. SOMALILAND.

Three Ordinances were passed during the year, but none is of sufficient importance to call for particular mention.

4. NYASALAND.

Native Cattle. — No. 2 prohibits the purchase of native cattle without a permit.

Post Office.—No. 3 consolidates the law relating to the Post Office.

Land Registration.—No. 8 re-enacts and extends the Ordinance No. 19 of 1910, requiring the registration of documents affecting land transfer.

Notaries. — No. 9 provides for the appointment of notaries public and commissioners for oaths.

Trading with the Enemy.—Nos. 11 and 12 amend the Trading with the Enemy Ordinance and authorise the appointment of a Custodian of Enemy Property.

IX. SOUTH ATLANTIC.

1. BRITISH GUIANA.

[*Contributed by the* HON. J. J. NUNAN, K.C., LL.D.]

Thirty-five Ordinances were passed, one being a private Ordinance, the rest being public general Ordinances.

Arms and Ammunition.—Ordinance No. 4, based upon Hong Kong legislation, makes provision for the issue of licences to keep, use, or carry, to sell or otherwise deal in, and to manufacture, arms and ammunition.

Magistrate Courts.—Ordinance No. 9 enables a Puisne Judge of the Supreme Court to hear and determine Petty Debt cases in Georgetown. The object is to lessen the local cost of the administration of justice pending the introduction of a West Indian Appeal Court. It enables one of the two Georgetown magistrates to be dispensed with while retaining a third judge to hear Supreme Court Appeals.

Supreme Court. — An important Ordinance (No. 10) re-enacts

with amendments the Supreme Court Ordinance, 1893. It enables two judges to hear appeals from a third judge and provides that the judge appealed from shall not sit as hitherto to hear appeals from himself. It abolishes the system of limited jurisdiction, which prevented a single judge from adjudicating in matters over £2,500. It limits the long vacation to the months of July and August. The Ordinance was drafted partly to enable a third judge to be dispensed with in case a West Indian Appeal Court is established, as has since been agreed upon at a Conference held in Trinidad. A similar Ordinance has been introduced and passed in Trinidad since the date of the British Guiana Bill.

Government Currency.—Ordinance No. 16 enables the Government of the Colony to issue, as legal tender currency, notes of denominations of $1 and $2 and of such higher values as the Secretary of State may approve. It creates a Board of Commissioners of Currency and provides for a Note Guarantee Fund and a Depreciation Fund.

Police.—Ordinance No. 18 enables the Police Force to be employed on actual military service within the Colony in case of actual or apprehended invasion, subject to the Army Act. Subject to a vote of the Combined Court, it makes provision for the wives and families of members of the Police Force killed or dying from wounds or disease while on such service.

Censorship of Telegrams and Postal Packets.—Ordinance No. 21 follows the general lines of the legislation of Trinidad and other Colonies in regard to war censorship of telegrams and postal packets. It provides also for the censorship of shipowners' letters.

Militia.—Ordinance No. 22 provides for the application of the Army Act to the members of the contingents despatched by the Colony to serve with His Majesty's Regular Forces.

Copyright.—Ordinance No. 23 adopts for the Colony ss. 11 and 12 Copyright Act, 1911.

Customs.—Ordinance No. 30 gives power to prohibit the exportation of arms and other articles likely to be useful to the enemy.

The most important legal event of the year was the report of the Statute Law Committee presided over by the Attorney-General. It submitted a draft Civil Law of British Guiana Bill and ten other bills to enable the scheme of the Common Law Commission for the substitution of English for Roman-Dutch law to be carried into effect.

The proposals have been approved by the Secretary of State for the Colonies, and the Civil Law of British Guiana Bill has since been passed into law.

2. FALKLAND ISLANDS.

Ordinances passed—5.

No. 3 prohibits trading with the enemy, and No. 5 provides for the maintenance of discipline on board Admiralty transports.

X. THE WEST INDIES.

1. BAHAMAS.

[*Contributed by the* Hon. Harcourt Malcolm, K.C.]

Acts passed—17.

War Contingent. — The Bahama Islands War Contingent Act, No. 1, provides for the raising of a contingent of 200 men to assist and form part of His Majesty's Regular and Imperial forces during the present war and for maintaining the effective strength of such Contingent at that number. Liberal provision is made for the payment of separation and other allowances, pensions, and gratuities in connection with such Contingent. The scale of pensions, gratuities and disability allowances are those fixed from time to time under the Imperial Army Act or the King's Regulations with reference to the West India Regiment. Return passages from England or Jamaica to the Colony are provided for. The Governor has power to appoint a fit and proper person fully and effectually to carry out under his directions the provisions of the Act and to confer upon any such person such military rank and title as he may deem necessary. An itemised return of all payments made under the Act must be laid on the Table of the House of Assembly within thirty days after the close of the financial year. "Dependent" means and includes wife, parent, or grandparent and child—in the case of a girl up to sixteen years and of a boy up to fourteen. "Child" includes an illegitimate child.

Members of Parliament. — The House of Assembly Members Disqualification Relief Act, No. 2, gives relief in cases of members

accepting any office or place of profit under the Crown in connection with and during the period of the present war. It is retrospective in effect, but does not apply to any future House of Assembly or the members thereof. It is drafted along the lines of the Imperial Act, 5 Geo. V. c. 3.

Criminal Informations.—The Informations Act, No. 3, is a reproduction of the Imperial Indictments Act, 1915 [1]—with the necessary verbal changes.

Light Dues.—The Light Dues Amendment Act, No. 4, exempts from Light Dues vessels arriving at Nassau with closed mails from any port beyond the limits of the Colony.

Naturalisation.—The Naturalisation Act, No. 5, requires the registration in the Office of the Registrar of Records of all declarations and other documents required to be registered by the Imperial British Nationality and Status of Aliens Act, 1914, or by the regulations made thereunder. Imprisonment for a period not exceeding three months is provided upon summary conviction for any false representation or statement made by any person for any of the purposes of the Imperial Act. Among other fees a fee of £5 is payable on a grant of a certificate of naturalisation. This fee is in addition to the stamp duty of £5 imposed on every certificate of naturalisation under the Stamp Act, 1911.

Marriage.—The Foreign Marriage Act, No. 7, gives effect to the Imperial Foreign Marriages Order in Council, 1913, made under the Imperial Foreign Marriage Act, 1892. The necessary notice is given to the Registrar of Records and is published in the Official Gazette. A caveat may be entered and, in case of doubt, the Registrar of Records may refer the matter to the Attorney-General for his decision. From the refusal of the Registrar of Records to give a certificate an appeal lies to the Attorney-General.

The Marriage of British Subjects Facilities Act, No. 8, provides facilities for marriages between British subjects resident in the United Kingdom and British subjects resident in the Bahamas. A certificate of marriage issued in the United Kingdom shall have the same effect as a certificate of marriage issued in the Colony. Where the marriage is intended to be solemnised in the United Kingdom a certificate may be issued in the Colony as if the marriage was to be solemnised in the Colony under circumstances requiring

[1] 5 & 6 Geo. V. c. 90.

the issuing of such a certificate, and as if both parties were resident in the Colony.

Diseases of Plants.—The Plants Protection Act, No. 9, practically re-enacts the Plants Protection Act, 1914, which it repeals. The powers of the Governor in Council and the Board of Agriculture are, however, considerably enlarged and greater stringency is infused into the regulations in connection with the importation of plants. Inspectors are to be appointed, and they are clothed with wide powers. A grant of £400 is made for carrying out the provisions of the Act, which is limited to a year in duration.

Out Islands Administration.—The Out Islands Administration Amendment Act, No. 10, limits to six weeks after the date when an Order in Council dividing any part of the Colony into districts is laid on the table of either House of the Legislature, the period within which a resolution condemnatory of the division can be passed by either House with effect. It also repeals that part of the Out Islands Administration Act, 1908, which refers to cadets who are now provided for separately in Chapter II of this session. Upon a vacancy occurring in a particular division such vacancy need not be filled, but an extra appointment can be made to a lower division in excess of the number provided for such division by the Act of 1908.

Cadets.—The Cadets Act, No. 11, authorises the appointment of three cadets. In the first instance the appointment is on probation for a period not exceeding two years. Cadets must have attained sixteen years of age and must possess such qualifications as the Governor may think necessary, and their services shall be available in any part of the Colony. The salaries are £72, £85, and £100 respectively.

Pensions.—The Pensions War Provisions Act, No. 12, safeguards the pension rights of public officers who have been permitted to undertake naval or military duties during the present war.

Dentists.—The Dentists Act, No. 13, makes it illegal, under penalty not exceeding £100 for a first offence and £200, with or without six months' imprisonment, for a subsequent offence, for any one other than a practitioner of one year's standing in the colony to practise dentistry who is not registered under the Act. Registered practitioners are divided into two classes, qualified and unqualified. Qualified practitioners are: (*a*) Persons holding a degree or diploma as a dentist of any university or institution of the Empire;

and (*b*) persons holding a degree or diploma in dentistry of any university or institution in any foreign country which the Governor in Council may determine to recognise. Unqualified practitioners may be licensed to practise in an Out Island if recommended by the Commissioner of the District. The fiat of the Attorney-General is required before any one can be prosecuted under the Act. The onus of proving registration is on the defendant. The registration fee is five guineas, and the licence fee 1*s*. The Act does not prohibit a registered medical practitioner from extracting teeth for the relief of pain or applying remedies for such purposes, or a registered druggist from applying remedies for the relief of pain.

Pilotage.—The Pilotage Amendment Act, No. 14, *inter alia* makes the owner or master of a vessel navigating under circumstances in which pilotage is compulsory answerable for any loss or damage caused by the vessel or by any fault in the navigation of the vessel in the same manner as he would be if pilotage were not compulsory.

This is a reproduction of s. 15 (1) of the Imperial Pilotage Act, 1913, passed in relation to the International Maritime Convention signed at Brussels on September 23, 1910. The provisions of the Bahamian Act came into force on August 1, 1916.

Public Acquisition of Land.—The Acquisition of Land Amendment Act, No. 15, makes a slight verbal amendment to the Acquisition of Land Act, 1913.

2. BARBADOS.

[*Contributed by the* Hon. Sir H. H. Greaves, *Chief Justice.*]

Acts passed—56.

Parochial Treasurers and Collectors of Rates. — The Vestries (Amendment) Act, 1916 (No. 1) provides that the parochial treasurers and collectors of rates of the several parishes shall deposit the rates collected in one of the local banks; that the Parochial Treasurer of St. Michael shall be paid by a commission of 3 per cent. per annum on all rates collected, and shall not be engaged in any other business, nor be the director of any public or private company, and shall give security along with an approved guarantee society in the sum of £2,000.

Lepers.—The Lepers (Amendment) Act, 1916 (No. 3) prohibits the carrying on of the trades and callings specified in the schedule

to the principal Act at any house where a leper resides or visits, or by any person who attends on, or associates, with a leper. A later Amendment Act (No. 55) prohibits the landing of any leper arriving at this island, unless it shall be made to appear to the Governor that the leper is a native or domiciled inhabitant of the island. Provision is made in the principal Act for an enquiry by a competent Medical Board to determine whether the suspect is a leper, and pending such enquiry the suspect is detained on the ship.

Evidence.—The Evidence (Amendment) Act, 1916 (No. 4) provides for recognition by the courts of this Colony of affidavits, etc., sworn before British diplomatic or consular officers, and enables such officers to verify, in a foreign country, deeds, wills, etc. This Act also applies to this Colony certain provisions of the Commissioners for Oaths Acts (Imperial) of 1889 and 1891.

Public Entertainment.—The Licensed Places of Public Entertainment (Amendment) Act, 1916 (No. 5) provides for ensuring exits in case of fire, and empowers the Governor in Executive Committee to prohibit any exhibition which is obscene, or injurious to public morals, or offensive to public sentiment.

Export Duties. — The Export Duties Continuance Act, 1916 (No. 7), continues No. 18 of 1915 to December 31, 1916. The duties, however, are increased, and provision is made that such duties shall be placed to the credit of a special account in the Treasury, and shall be applied only to expenditure incurred, or to be incurred, in connection with the war.

Marriage. — The Marriage of British Subjects Facilities Act, 1916 (No. 11), establishes in this island the reciprocal legislation which is a condition precedent to the issue of an order by His Majesty in Council, applying s. 1 of the Imperial Act 5 & 6 Geo. V. c. 40 to this island. The Act provides that, where a marriage is to be solemnised in the United Kingdom between British subjects, one resident in the United Kingdom and the other in Barbados, banns of marriage may be published, or notice given to a police magistrate as if both parties resided in Barbados, and a certificate of the publication of such banns or of such notice shall be given, and that, if the marriage of such parties is to be solemnised in Barbados, a certificate for marriage issued by a registrar in the United Kingdom, or a certificate of proclamation of banns in Scotland, shall have the same effect in this island as the publication of banns, or

a marriage licence issued by the Colonial Secretary, or a notice given to a police magistrate. The Marriage (Amendment) Act, 1916 (No. 14), makes the certificate of a police magistrate given under ss. 34–37 of the Marriage Act, 1904 (1904–9), the only valid certificate for the purposes of the Imperial Marriage Act, 1892 (55–6 Vict. c. 23); and the period of residence in the district of the magistrate is made the same as that now prescribed—one week—or which may hereafter be prescribed by the Foreign Marriage Order in Council, 1913.

Emigration.—The Emigration (Amendment) Act, 1916 (No. 13), provides that a contract for work in the foreign countries named, or deemed to be named, in the schedule shall not be binding on the intending emigrant unless formally legalised in the manner prescribed in the schedule. This formality of legalisation usually takes the shape of attestation before the Consul of the country to which the emigrant intends to go. Requirements as to legalisation in the case of countries other than those named in the schedule may be set forth in regulations made by the Governor in Executive Committee; and such requirements, and the names of such other countries, shall then be deemed to be inserted in the schedule.

Trading with the Enemy.—The Trading with the Enemy (Extension of Powers) Act, 1916 (No. 15), is a transcript of the Imperial Statute 5 & 6 Geo. V. c. 98, with the necessary formal alterations. The Trading with the Enemy (Neutral Countries) Act, 1916 (No. 31), empowers Customs Officers to detain goods coming to the island that may be consigned to or by persons or firms whose names are on the Black List. Such goods may be dealt with as the Governor may direct.

Stamp Duties.—The sections of the Stamp Act, 1916 (No. 17), follow the Imperial Stamp Act, 1891. The schedule is mainly on the lines of the Grenada Stamp Ordinance, c. 19, of the Revised Laws of Grenada. The Amending Act (No. 25) embodies provisions taken from 54–5 Vict. c. 38, 39 and 62–3 Vict. c. 9. S. 13 exempts warrants of attorney to confess judgment from stamp duty because it is not the practice here to give such warrants; the duty is put on the judgment itself.

Children and Crime.—The Police Magistrates (Amendment) Act, 1916 (No. 23), repeals s. 22 of the Police Magistrates Act (1905), and substitutes a section taken from ss. 99 and 131 of the Children

Act, 1908 (8 Ed. VII. c. 67). The effect of the new section is to raise the age of a "child" for the purposes of the section from twelve to fourteen years, and to impose on parents or guardians greater responsibility with respect to offences committed by their children or wards. If a child or a young person (that is, one under sixteen years of age) is charged with an offence, and the magistrate is of opinion that the imposition of a fine, damages, or costs would best meet the case, he shall, in the case of a child, and may, in the case of a young person, order that the fine, damages, or costs be paid by the parent or guardian, unless he is satisfied that the parent or guardian has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person. Provision is also made enabling the magistrate to require the parent or guardian to give security for the good behaviour of the child or young person without proceeding to a conviction.

Prisons.—The Prisons (Amendment) Act, 1916 (No. 24) enables the Governor of the island to cause the removal of a sick prisoner to the General Hospital for serious surgical treatment. The period of detention at hospital counts as part of the term of imprisonment. Heretofore, when removal to the General Hospital was necessary, the Governor was forced to remit the unexpired portion of the sentence.

Consuls and Consular Officers.—The Customs Tariff (Amendment) Act, 1916 (No. 37), exempts from import duty the baggage and personal and household effects of Consuls and consular officers not engaged in any other business or profession if the Government by which such officer is accredited accords similar treatment to British Consuls.

Aliens.—The Aliens Restriction Act, 1916 (No. 29), aims at preventing the landing of aliens without special leave unless passports not more than two years old with photographs attached are produced.

Censorship.—The Censorship (Amendment) Act, 1916 (No. 34) prohibits the transmission (otherwise than through the post) or conveyance to or from the island of a letter or written message to any person at all. It was soon discovered that the Act hampered commerce by restricting the despatch of consignors' letters by the ships taking the goods consigned. The Censorship (Amendment) Act (No. 44), was, therefore, passed to prevent the application of

Act No. 34 to any letter or written message exempted by order of the Governor from the operation of the Censorship Acts.

Indictments.—The Indictments Act, 1916 (No. 35), is a transcript of nearly the whole of the Imperial Act (5 & 6 Geo. V. c. 90). No provision is made, as in the Imperial Act, for a Rules Committee; but the Rules and Forms framed by the Imperial Rules Committee have been added to the local Act in a Schedule.

Discipline of Admiralty Transport Seamen.—The Admiralty Transport Seamen Discipline Act, 1916 (No. 51), was passed in compliance with the request of the Lords Commissioners of the Admiralty. It provides that if, whilst within the jurisdiction of this island, a seaman serving on board a British ship belonging to, or chartered or requisitioned by, the Admiralty neglects to join his ship, or is absent without leave, or joins the ship when so drunk that he cannot properly perform his duties, he shall be guilty of an offence, and may be arrested without warrant. The penalty for the offence is that prescribed by s. 221 of the Merchant Shipping Act, 1894.

3. BRITISH HONDURAS.[1]

[*Contributed by the* HON. L. H. ELPHINSTONE.]

Ordinances passed—24.

Criminal Law. — Ordinance No. 14 amends the law as to the restoration of stolen property. S. 36 of c. 12 of the Laws of 1914, which empowers the Supreme Court to order the restoration of property to any person who has been deprived thereof by any crime, and has prosecuted the criminal to conviction, contains a proviso "that a person who has, without fraud or knowledge of the crime, become possessed of any such property for value, shall, to the extent of the value which he gave for it, be entitled to a lien upon it." The result was that an owner who prosecuted a thief to conviction, had to pay off an innocent purchaser or pledgee, and was actually in a worse position than if he had refrained from prosecuting the thief. Ordinance No. 14 repeals this proviso, and empowers the Court to compensate an innocent purchaser or pledgee of stolen property "out of any money belonging to the criminal

[1] *The Revised Edition of the Consolidated Laws of British Honduras* is referred to as "the Laws of 1914."

and in the custody of the Court or of the police." The Ordinance also applies s. 36 as amended to courts of summary jurisdiction.

Ordinance No. 15 amends the law as to "unlawful possession." S. 14 of c. 29 of the Laws of 1914 (corresponding to s. 66 of the Metropolitan Police Act, 1839 [1]) empowers police constables to arrest without warrant "any person who may be reasonably suspected of *having or conveying* in any manner anything stolen or unlawfully obtained." S. 18 (3) of the same chapter (corresponding to s. 24 of the Metropolitan Police Courts Act, 1839 [2]) provided for the summary conviction of any person "charged with *having in his possession or conveying* anything which may reasonably be suspected of being stolen or unlawfully obtained, and who shall not give, to the satisfaction of such magistrate, an account how he came by the same." It was held by the Colonial Supreme Court (following *Hadley* v. *Perks* [3]) that "having in his possession" in s. 18 (3) must be construed *ejusdem generis* with "conveying," so that usually a person could not be convicted under that section of having stolen goods in his house. Ordinance No. 15 removes this defect by making punishable on summary conviction "Any person who has in his possession, power, or control anything reasonably suspected of having been stolen or unlawfully obtained, and does not show, to the satisfaction of the magistrate, that the same was neither stolen nor unlawfully obtained by him."

S. 3 of Ordinance No. 15 extends the power of issuing search warrants for stolen goods to goods "which are reasonably suspected of having been stolen or unlawfully obtained." This section will, it is hoped, be useful in cases of prædial larceny where the stolen produce cannot be identified.

Crown Land.—Ordinance No. 20 provides that every disposition of Crown land made during the war to which the Governor declares the Ordinance to be applicable "shall, notwithstanding any want of title in the Crown or any defect in the Crown's title, be valid and effectual according to its purport." Persons thereby deprived of any land are to receive compensation out of public money, but "improvements on the land or in the neighbourhood effected by any person other than the claimant or a person through whom he derives title shall not be taken into account." The Ordinance was passed to remove the difficulty in making grants of Crown land

[1] 2 & 3 Vict. c. 47. [2] 2 & 3 Vict. c 71. [3] (1866) L.R.I. 1 Q.B. 444.

which arises in certain localities from the uncertain extent of the Crown grants of unsurveyed lands made in the thirties.[1]

Currency Notes.—Ordinance No. 5 provides (s. 1): "The commissioners of currency shall not issue any currency notes unless a notice specifying their denominations and distinguishing letters and numbers, and declaring that their issue is authorised, has been previously published in the *Gazette*, and a currency note shall not impose any liability on the Government or be a charge on the assets of the said commissioners or the general revenue of the Colony or otherwise, unless its issue has been declared to be authorised in manner aforesaid."

The object of the Ordinance is to guard against the theft or capture by the enemy of currency notes while in transit from England.

By s. 4 "in all proceedings, whether civil or criminal, a statement signed by the commissioners of currency shall be sufficient evidence of the facts stated therein as to the number and description of the currency notes, at any time, provided, issued, received, or reissued by the commissioners, and as to any other matter or thing relating to the performance or execution of the commissioners' duties, or powers."

The section was passed to meet the difficulty of proving the transactions of former commissioners who have left the Colony but are still living.

Daggers.—Ordinance No. 16 prohibits the carrying of daggers on the person, and also their importation or sale. By s. 2 (1) "dagger" means "any instrument having a metal blade with any edge or the point sharpened or suitable for being sharpened fixed into a handle so that it cannot be shoved in or closed into the handle, but does not include an instrument suitable and intended to be used for the purposes of any trade or industry or for domestic or hunting purposes." By s. 2 (2) any person may take the opinion of the Superintendent of Police whether any instrument is or is not a dagger, and the opinion of the Superintendent of Police that an instrument is not a dagger is to be conclusive.

Juries.—Ordinance No. 6 provides that there shall be summoned as jurors for every sessions of the Supreme Court "such number of special jurors, and such number of common jurors as the

[1] See *The Review of Legislation*, 1915, p. 176, heading "Boundaries."

Chief Justice shall consider necessary having regard to the number and nature of the cases for trial." This section is in lieu of s. 17 of c. 13 of the laws of 1914, which provided for the summons of a fixed number of jurors irrespective of the number of cases for trial.

Trading with the Enemy.—Ordinance No. 10 reproduces the substance of the Imperial enactments as to trading with the enemy and the custody and management of enemy property, modified so as to suit local conditions.

Volunteer Force.—Ordinance No. 7 facilitates the discharge of members of the Volunteer Force service outside the Colony in the British West Indies Regiment.

Ordinance No. 8 alters the title of the volunteer force from the "British Honduras Volunteer Force" to the "British Honduras Territorial Force."

4. JAMAICA.

Acts passed—41.

Jamaica Contingent.—No. 19 provides for the recruiting of the Jamaica contingent.

Estate Duty.—No. 21 consolidates the law on the subject of estate duty.

Death Duties.—No. 27 gives relief from the payment of death duties by the dependents of men killed in action.

Alien Enemies.—Nos. 29 and 41 provide for winding up the affairs of alien enemies.

5. TRINIDAD AND TOBAGO.

Ordinances passed—47.

The most important Ordinances passed during the year were "An Ordinance to consolidate and amend the law relating to Merchant Shipping" (No. 7); "An Ordinance to amend the Municipal Corporations (Elections) Ordinance" (No. 20), providing for voting by ballot in municipal elections; "An Ordinance relating to Immigration" (No. 26) consolidating and amending the previous legislation on the subject, and providing for the abolition of imprisonment for labour offences. An Ordinance was also passed consolidating the law relating to Bankruptcy (No. 28), as well as Ordinances

amending the Summary Convictions (Offences) Ordinance (No. 43), and the Food and Drugs Ordinance (No. 44).

In addition to these, war enactments were passed on the subject of Trading with the Enemy (two) and Customs (War powers) (two).

6. WINDWARD ISLANDS.

(i) GRENADA.

Ordinances passed—19.

Marriages.—No. 1 facilitates the marriage of British subjects on the same lines as legislation passed in other parts of the Empire.

Estate Duty.—No. 3 appoints a Controller of Estate Duty, and provides relief in respect of quick succession.

Trading with the Enemy.—No. 4 extends the restrictions on trading with the enemy to persons of enemy nationality or association. Nos. 15 and 19 also strengthen the law on the subject.

Education.—A Grenada Scholarship of the value of £175 per annum is established by No. 10 to be held in any University or College in Europe or Canada or any agricultural, scientific, or technical college or institution in Europe, Canada, or the United States.

Naval Discipline.—No. 18 is the ordinance in the usual form to provide for the discipline of seamen on board Admiralty transports.

(ii) ST. LUCIA.

Ordinances passed—24.

Volunteer Force.—No. 1 makes regulations for the discipline of the Volunteer Force of the Colony. It is amended by No. 12 on the subject of their re-engagement.

Prohibition of Exports.—No. 3 enacts on the usual lines the prohibition of exports.

Trading with the Enemy. — No. 6 re-enacts and extends the Ordinance of 1914 so as to bring it into conformity with English legislation. It is extended by No. 10 to persons of enemy nationality or associations.

Motor-cars.—No. 9 provides for the regulation and the registration of motor-cars.

Marriage.—No. 15 facilitates the marriage of British subjects residing in the Colony on the same terms as legislation passed elsewhere.

(iii) ST. VINCENT.

[*Contributed by the* HON. A. DE FREITAS.]

Of the 38 Ordinances passed in 1916, Nos. 1, 2, 5, 13 and 20 impose new taxation by means of excise and export duties and war postage stamps, Nos. 8, 9, 10, 15, 21, 25, 26, 35 and 38 are temporary war measures, No. 24 is the usual annual appropriation law, No. 28 authorises the raising of a loan to meet war expenses, and No. 37 declares that a certain Government Medical Officer shall be deemed to be duly registered, though he does not possess the necessary statutory qualifications.

The Ordinances of more general interest are as follows:

Prevention of Yaws.—No. 3 provides for the establishment by Government of travelling dispensaries for the purpose of a campaign against the disease known as "yaws." (*Frambœsia*), which affects a large number of agricultural labourers and their children. It imposes an obligation on every person who is suffering from yaws to attend a dispensary for treatment and on the guardian of every child to cause the child to attend a dispensary.

Medical Registration. — No. 4 allows to be registered in the Colony only doctors who are registered in the United Kingdom or doctors of medicine or surgeons of approved colonial universities or colleges.

No. 14 empowers the Governor in Council to direct the removal from the Register of the name of any person who has been convicted of felony, or who has been adjudged by the Governor in Council, after due inquiry, to have been guilty of any infamous or disgraceful conduct in a professional respect, or whose name has been removed from the Register in the United Kingdom or in any British Colony. The previous law authorised the removal of a name only on conviction of felony.

Evidence of Children. — The Unsworn Evidence of Children Ordinance, No. 6 of 1916, is an adaptation of s. 15 of 4 Ed. VII. c. 15 and s. 30 of 8 Ed. VII. c. 67.

Foreign Oaths. — No. 7 provides for the recognition of oaths, affidavits, and notarial acts administered, sworn or done by or before Consuls and other persons in foreign places. It follows ss. 6 and 11 of 52 & 53 Vict. c. 10, s. 6 and s. 2 of 54 & 55 Vict. c. 50.

Elementary Education.—No. 11 empowers the Governor to

appoint managers of Government Primary Schools and authorises the Inspector of Schools, in his *ex-officio* capacity of manager of such a school, to exercise the powers of a manager independently of any other manager.

Dangerous Petroleum.—No. 12 amends the definition of "dangerous petroleum" in the Explosives and Petroleum Ordinance 1910, and defines it as being petroleum which, when tested by Abel's test, gives off an inflammable vapour at a temperature of less than 95° Fahrenheit. The limit was formerly fixed at 83°.

Cotton Pests.—The cultivation of Sea Island cotton of the best quality having become an important industry of the Colony, the Agricultural Department is alert in the detection and destruction of pests causing injury to cotton plants. On the recommendation of the Department the Cotton Stainer Ordinance, No. 16 of 1916, was passed to provide for the eradication of the insect known as the "cotton stainer" (*Dysdercus delauneyi*, Leth.). Power is given to the officers of the Department to enter upon any lands and to destroy all trees and shrubs upon which the cotton stainer is accustomed to feed. From August 1916 to May 1917, in the first campaign carried out under the Ordinance, 1,542 silk-cotton trees (*Eriodendron anfractuosum*) and 1,1570 John Bull trees (*Thespesia populnea*) were destroyed; and it is reported that the result has been a satisfactory increase in the quantity of cotton reaped.

Land Registry. — No. 17. The meaning of "Registrar" is extended to include his chief clerk for the purposes of certain sections of the Registry Ordinance, 1883.

Arrowroot Growers Association.—It is recited in the preamble of the Arrowroot (New Market Fund) Ordinance, 1910, that "it is expedient to provide for an increase of the export duty levied on arrowroot for the purpose of forming a fund to be used for the purpose of increasing the consumption of St. Vincent arrowroot in foreign lands." An export duty was previously levied for the benefit of the public revenue of the Colony. The further duty imposed by this Ordinance is collected by the Customs Authorities and paid to the Committee of the Arrowroot Growers and Exporters Association. This Association was formed to protect and improve the arrowroot industry at a time when low prices and uncertain markets were restricting the output and making the extinction of the industry probable. The Fund is used for advertising and other

measures for extending the consumption and maintaining the price of arrowroot. No. 18 of 1916 continues the principal Ordinance for another year. No. 32 of 1916 authorises the making of donations from the Fund to certain charities connected with the present war.

Sale of Rum.—No. 19 makes it unnecessary for a distiller to take out a licence to sell rum manufactured by him if he sells not less than fifteen gallons at one time.

Anglican Church Trustees.—No. 22 re-enacts the terms of No. 2 of 1894, which was inadvertently omitted from the revised edition of the laws brought into force in 1911.

Funds in Magistrates' Courts.—No. 23 provides for the disposal of monies received by magistrates under the civil and criminal jurisdictions of their Courts.

Magistrates' Procedure.—No. 25 empowers the Governor to appoint some fit and proper person to hold the usual preliminary inquiry into a charge for an indictable offence where the magistrate whose duty it would otherwise be to hold it is unable to do so "from personal interest or for any other sufficient reason."

Colonial Engineer's Department.—No. 29 provides for the appointment of an officer called the Colonial Engineer to be in charge of the Public Works, Survey Crown Lands, and Land Settlement Departments.

Divorce Jurisdiction.—No. 30 confers on the Supreme Court of Judicature jurisdiction in divorce and matrimonial causes.

Evidence.—The Evidence Amendment Ordinance, No. 31 of 1916, repeals so much of No. 99 of 1854 as is taken from ss. 1, 2, and 3 of 16 & 17 Vict. c. 83, and it enacts the provisions of ss. 2 and 3 of 32 & 33 Vict. c. 68.

Survey of Boundaries.—No. 34 provides for the survey and settlement of boundaries of land.

7. LEEWARD ISLANDS.

Fifteen Federal Acts and twenty-nine Presidential Ordinances were passed during the year 1916. The more important Ordinances are certain Ordinances relating to taxation in St. Kitts.

As a precautionary measure against the dangers arising from an exiguous and shrinking surplus, an Emergency War Tax Ordinance

was passed whereby port and harbour dues and land and house taxes were increased 50 per cent. for the financial year 1916–17.

An export duty was also imposed on cotton for the crop year, October 1, 1916, September 30, 1917, at the rate of ½*d.* per lb. on St. Kitts cotton and ¼*d.* per lb. on Nevis and Anguilla cotton.

The following Ordinances of Dominica may be noted :

(*a*) No. 2 of 1916, providing the sum of £10,000 as a gift to His Majesty's Government, to be applied as may be decided by them for the prosecution of the war.

The following increases in taxation and duties were imposed to meet this charge until the sum of £10,000 was realised : 50 per cent. on spirits imported or manufactured in the Colony and on liquor and trade licences ; 100 per cent. on products of the island exported ; and 1*s.* on each barrel of green limes exported.

(*b*) No. 3 of 1916, regulating the registration of births and deaths.

XI. MEDITERRANEAN COLONIES.

1. EGYPT.

[*Contributed by* WILLIAM MAKRAM EBED, ESQ.]

No. of Laws (*Lois*) passed—29.

In 1916, as in 1915, the more important legislation in Egypt was chiefly promulgated by Military Proclamation, legislation in the ordinary forms being confined to matters of detail in the civil organisation. No new schemes of reform were introduced, although several important projects were taken into consideration with a view to their eventual adoption after the war, when, as is now generally recognised, the whole judicial organisation will have to be completely recast. One of the first steps to be taken will doubtless be the abolition of the capitulation privileges of foreigners, which have hitherto offered very serious obstacles to legislative reform of a general character. A striking illustration of the anomalous position frequently created by the capitulations is afforded by the recent incident which arose in connection with the attitude taken by the Italian Government towards the prolongation of the existence of the Mixed Courts. As has already been pointed out in the last

review of Egyptian legislation in this journal, the powers of the Mixed Courts, which were renewed every five years before the war, had, as a result of the outbreak of war between the principal capitulary Powers, to be renewed once a year, as a temporary measure, pending a final solution of the capitulations question. On the expiration of the first period of renewal, viz. on February 1, 1916, each of the Allied and Neutral Powers entitled to capitulation privileges sent in its assent to a further renewal for one year, with the exception of Italy, who, for reasons into which it is now immaterial to enter, did not give her assent until the middle of March. The result was that the Mixed Courts suspended all litigation in which Italians were concerned, and Italian residents found themselves in the curious position of being unable either to sue or to be sued before any Courts in Egypt other than their own Consular Courts, the jurisdiction of which related mainly to matters of personal status. The Mixed Court of Appeal attempted to avoid the difficulty by deciding that, in existing circumstances, the jurisdiction of the Mixed Courts over the subjects of any given Power continues, upon a renewal of the existence of the Courts, at least until such time as the Power concerned has given definite notice that it does not propose to concur in the renewal. That view was not, however, universally accepted, and, on Italy giving her assent some weeks later, a law (No. 7) had to be passed dating it back to February 1, as from which date the powers of the Mixed Courts were renewed with the assent of the other Powers by Law No. 2.

Fiscal Laws.—Nos. 3, 4, 8, 12, 24, 27, and 28 refer to the imposition or increase of local taxation. Law No. 8 is the Budget Law. Law No. 25 introduced the new coinage which was to bear the "toughra" of the Sultan of Egypt in place of that of the Ottoman Sultan, as also an inscription indicating the value of each denomination both in Arabic and in English. The following passage from the High Commissioner's letter to the Sultan concerning the new coinage gives a clear notion of the extent and object of the measure in question: "Je suis chargé par le Principal Secrétaire d'État des Affaires Etrangères de Sa Majesté de faire connaître à Votre Hautesse que le Gouvernement de Sa Majesté trouve tout naturel de remplacer le monogramme ou toughra du Sultan de Turquie, que les pièces égyptiennes ont porté jusqu'ici, par le toughra de Votre Hautesse. Il estime en même temps que l'emploi de la langue anglaise à côté

de la langue arabe sur une face des pièces pour en indiquer la valeur, tout en facilitant la circulation, servirait à rappeler les liens existant aujourd'hui entre l'Egypte et la Grande-Bretagne." No changes were made in the denominations and values of the new coins, the Egyptian pound being maintained as the monetary unit as well as the decimal scale hitherto in force. Owing to the shortage of silver money, Indian rupees were given provisional currency in Egypt by a Decree of March 6, but are now practically withdrawn from circulation. Law No. 13 dealt with the hall-marking of metals (*pointonnage*). Law No. 20 orders a Census of the whole population to be made in 1917. The last Census of 1907 marks a population of about 11,000,000 inhabitants, of whom about 1,000,000 are Christians.

Agricultural Laws.—Nos. 1, 16, 17, 26, and 29 deal with plant diseases of various kinds, and mainly with measures for the destruction of the Pink Boll-worm affecting cotton seed.

Education.—Law No. 26 of 1915 abolished the Primary Education Certificate and substituted for it a special Entrance Examination for the purpose of admitting candidates to the Secondary Schools. For admission to the Government Service, a higher certificate of aptitude is now required, which is obtained after two years' study in a Secondary School, and represents the first part of the Secondary Examination. The second part gives admission to the Higher Schools of Law, Medicine, Engineering, etc., as also to higher clerical posts in the Government Service.

The abolition of the Primary Certificate marks an epoch in the history of educational progress in Egypt. While in the early years of the British occupation the possession of that certificate was considered by the general public to be a rare accomplishment opening the way to almost any public career, it has of late been almost entirely dispensed with as a qualification for even the lowest of Government posts, since hundreds of candidates holding higher certificates applied for these same posts, and the Government had perforce to give them preference. The general tendency has therefore been to aim at a higher standard of education than that afforded by the Primary Examination, which came to be looked upon as being, to all intents and purposes, a mere Entrance Examination to the Secondary Schools. Thus the above law merely sanctions in form a change which has already taken place in fact.

Another measure of far-reaching importance, which constitutes a serious step towards the generalisation of primary education, is the establishment of boys' and girls' higher elementary schools by Laws Nos. 13 and 14 respectively. The object of these schools is to provide a general practical education, supplementary to the instruction provided in the elementary schools (*Maktabs*). Hitherto, parents who wished to give their boys a modern education superior to that provided in the *Maktabs* have had to send them to the primary schools. The primary course of study was, however, never designed to be a finishing stage in education, but was framed with a view to preparing pupils for the Secondary course. For children whose school career must necessarily end at the age of about fifteen years, a more practical education based on the agricultural and industrial requirements of the country was therefore most desirable. To that end, the higher elementary schools were instituted, with a four years' course of practical and manual training specially designed for urban or rural requirements as the case might be. Other projects for the generalisation of education are under consideration, and it is generally believed that the introduction of compulsory education for Egyptian children is not far distant.

Judicial Organisation.—(*a*) *Mixed Courts.*—In addition to the laws already referred to, sanctioning the prolongation of the existence of these Courts for a further period of one year, a Decree was issued in July authorising the President of the Court of Appeal to select, as occasion requires, a First Instance judge to replace any Appeal judge temporarily absent or otherwise unable to sit. The short-handedness of the Court is, of course, due to the absence of enemy judges and the difficulty of recruiting Allied and Neutral judges in the existing circumstances.

(*b*) *Mohammedan Law Courts* (*Mehkemehs Shariahs*).—Law No. 15 laid down the Internal Regulations of the *Mehkemehs* Bar, the enforcement of which was entrusted to a Central Committee presided over by a Senior Advocate called the *Batonnier*. The Council of the Order, as the Central Committee is called, was to be elected annually and to exercise administrative powers similar to those vested in the Council of the Native Bar. The experiment of entrusting to the Native Bar the duty of conducting its own corporate affairs has proved a marked success, and it is to be hoped that the young Mehkemehs Bar will exercise its administrative

powers in an equally satisfactory manner. By Law No. 5 the *Cadis School* (an institution for the education of future judges—*Cadis*—of the Mohammedan Law Courts) was detached from the Azhar University and attached, for administrative purposes, to the Ministry of Justice. Originally, Mohammedan Law was taught exclusively in the Azhar, and Cadis were selected from among its graduates, who proved, however, totally ignorant of the organisation, rules and practice of the Mehkemehs, and had no knowledge of such supplementary subjects as administrative law, and the general organisation of government in Egypt. A Training College for Cadis, on the lines of similar institutions in other Mohammedan countries, was therefore created in 1907 for the purpose of training an efficient class of Cadis and Mehkemeh employees. Law No. 21 amends the provisions of the law of 1907 as to the admission of candidates, curriculum, examinations, and other matters of internal organisation.

(*c*) *Maglis Hasbys* (*Courts of Wards*).—These Boards, composed of administrative functionaries, religious representatives, and Notables have entire control over the fortunes, and, to a large extent, over the persons of minors and lunatics and other persons under disability. In order to enable the Cairo Meglis to keep abreast of the enormous number of cases entered for trial, Law No. 9 authorised the Council of Ministers to delegate an official to preside alternately with the Governor and Sub-Governor.

War Legislation.

(*a*) **Trading with the Enemy.**—1. *Enemy Property.*—In the last review of Egyptian War Legislation an account was given of a series of measures directed against trading with the enemy, prominent among which was a Proclamation of January 1915, prohibiting the making of payments for the benefit of persons resident in enemy territory. These measures were further extended and completed by a Proclamation of July 31, 1916, creating a Public Custodian of Enemy Property in whom enemy property of every kind was to be vested until the termination of the war. The provisions of this Proclamation may be summarised as follows: (1) Declaration should be made to the Licensing Officer of all sums, securities, or property of any description belonging or due to persons of enemy nationality or residing in enemy territory or with whom

trading was prohibited. The duty of making such declaration was to be incumbent on the holders of managers of enemy property in any capacity whatever, and in the case of companies or firms, or managers, directors or other authorised officers of the company. (2) Any sum of money, debt or other property of which declaration was required was to be paid to or vested in the Public Custodian by order of the Licensing Officer. The Public Custodian was to be clothed with all the rights of the enemy person entitled to such property, and could, subject to the directions of the Licensing Officer, sell any part of the property and satisfy out of the proceeds any due and ascertained debts, sue and be sued, and act in short as if he were owner. (3) Liquidators and Controllers of enemy business might also be appointed by order of the Licensing Officer, and were to have full powers for the purposes of liquidation or control as the case might be. A Proclamation of October 19 explained and amended the provisions of the above Proclamation in respect of debts due to enemy persons. As from that date, all debts without exception, including debts payable to a bank under former Proclamations, were to be paid to the Public Custodian, notwithstanding that any bill of exchange or other instrument might have been accepted or given in respect of the said debt and notwithstanding any assignment thereof by the enemy person. By a Proclamation of August 17, Insurance Companies registered or having their principal places of business in enemy territory were forbidden to carry on business, through their branches or agencies in Egypt, otherwise than under the supervision of a Controller appointed by the Licensing Officer. No new policies were to be issued and lapsed policies might only be renewed with the permission of the Licensing Officer.

On the other hand, a *Proclamation of November* 15 made provision for obtaining particulars of all property in enemy territory belonging to persons resident or carrying on business in Egypt and of all claims of such persons against enemy persons and Governments.

2. *Restrictions on Exports.—A Proclamation of February* 6 permitted, until further orders, the export of ginned and unginned cotton to Switzerland. By a *Proclamation of September* 25, the export of cotton seed was prohibited to other than Allied destinations. In this connection may be noted a *Proclamation of December* 14 which, with a view to preventing the accumulation of

cotton in Egypt and its eventual shipment to persons having enemy interests or associations, prohibited the storage of cotton in the name or at the disposal of any person not resident in Egypt, except under licence given by the War Trade and Licensing Officer. A series of other measures prohibited the export of corn, maize, rice, lentils, and other alimentary stuffs, as suggested by the requirements of the moment.

(*b*) **Military Offences.**—1. *General.* — The Proclamation of November 2, 1914 (issued on the outbreak of war with Turkey) enjoining the inhabitants of the country to abstain from all action of a nature to disturb the public peace or to aid the enemy, was explained and supplemented by a Proclamation of May 14, 1916, laying down general rules of conduct to be observed by civilians. Thus, under the heading of " Relations of Private Citizens with the Military Authorities," private citizens were required to comply with all reasonable orders given by any person acting under the authority of the Commander-in-Chief, particularly with respect to any information or assistance they might give. Under " Specific Prohibitions," it was provided that no letters or newspapers, unless carried for personal use, could be introduced into Egypt otherwise than through the post. Other specific prohibitions related to the use of wireless apparatus, spreading of false reports, disclosure of military information, photographing of military works, etc. The burden of proof was to lie on the accused, whose duty it would be to prove that any suspicion reasonably directed against him was groundless. The Proclamation further provided that any offence under English or Egyptian Criminal Law, even if not specifically dealt with by Proclamation, might, if deemed prejudicial to military interests, be tried under martial law—a striking illustration of the wide field which may be covered by martial law, even when it does not supersede ordinary law.

Under this head may be mentioned a Proclamation of January 28 disqualifying all persons of enemy nationality and all Egyptians who were forbidden to return to or reside in Egypt from participating in any municipal election either as electors or as candidates.

2. *Restriction of Liquor Trade.*—The restrictions on the sale of alcoholic liquor, of which some account was given in the last review of Egyptian legislation, were further extended in 1916 by a Proclamation of January 3, as amended by a later Proclamation of

February 3, empowering officers commanding districts to prohibit wholly or partially the sale of alcoholic liquor in public establishments situated within their respective districts, either to soldiers or to the public in general. In other words, the restrictions are no longer confined to Cairo and the principal towns, but may be enforced in any place where a military camp or hospital is stationed. In this connection it may be of interest to note a Proclamation of July 7 prohibiting the importation and possession of hashish and imposing heavier penalties than those already prescribed by the Egyptian Customs Code, which were found to be insufficiently deterrent. Thus martial law was resorted to when the ordinary law proved inadequate, and when legislation in the ordinary way would have been less expeditious and certainly less effective as regards foreigners enjoying capitulary immunities.

2. MALTA.

[*Contributed by* C. J. Colombos, Esq., LL.D.]

Ordinances passed—11.

The legislation passed in 1916 was mainly designed to meet the requirements of the situation engendered by the war. The amount of ordinary legislation was, therefore, very small, whilst, on the other hand, there was a considerable output of *emergency* regulations. This is fully explained when it is considered that Malta, besides being one of the most important ports in the Mediterranean, is also a fortress, a dockyard, and a naval base.

1.—*Ordinary Legislation.*

Legal Profession.—Ordinance No. 2 amends the Laws of Organisation and Civil Procedure in respect to admission to practise in the Colony and qualifying examinations. It is now sufficient for an advocate to possess the degree of Bachelor of Laws (LL.B.) instead of the higher degree of Doctor of Laws (LL.D.) which was required formerly.

Criminal Laws.—An amendment (No. 4) has been passed in the law governing offences against the reputation of persons. The new Ordinance provides that the party charged with the offence will not be admitted to produce in his defence evidence of the truth or of the notoriety of the fact attributed by him to the person offended.

An exception is made in the following cases: (*a*) when the person offended is a public officer or employee, and the fact refers to the exercise of his functions; (*b*) when a formal application that inquiry as to the truth or the falsity of the fact be instituted, is made by the person offended.

Coal Owners' Protection.—The Coal Owners' Protection Ordinance, 1915,[1] is amended (No. 8) with the object of providing better and more effective means against theft of coal stored or afloat in the harbours. The right to deal in coal is exclusively reserved to persons in possession of a licence from the Superintendent of the Ports, who has the power to limit the areas in which such trade must be carried on. No dealer is authorised to sell or otherwise dispose of any coal, except after the lapse of forty-eight hours from the time the coal came into his possession.

II.—Emergency Legislation.

Courts' Emergency Powers.—Proclamation No. 2 of 1916 is directed to mitigate the hardships caused by the outbreak of the war to business life and financial relations. The Courts of Civil Judicature are empowered to order: (*a*) the prorogation of the period of maturity or of payment of moneys that are or shall become due and payable in virtue of contracts constituting executive titles; (*b*) the suspension of the execution of judgments delivered by the Courts of Civil Judicature of these islands whenever such execution, owing to circumstances attributable directly or indirectly to the present state of war, would be inequitable or inexpedient. The period of the prorogation or suspension is left to the discretion of the Courts.

Trading with the Enemy.—The Trading with the Enemy Ordinance, 1914,[2] was on March 30, 1916, extended by No. 3 to such persons or bodies of persons not resident or carrying on business in enemy territory as the Governor, under a Proclamation, would consider expedient to apply—Statutory Black List.

Industry of Charcoal.—Owing to war difficulties, the importation of coal was much restricted, and, in order to encourage the production of charcoal, the exclusive right to exercise the industry of the carbonisation of wood for the period of two years was reserved to a named person by No. 5.

[1] See *Review of Legislation*, 1915, p. 194.

[2] *Ibid.*, 1914, p. 259.

Public Custodian of Enemy Property.—Ordinance No. 9 constitutes the office of Public Custodian in whom property belonging to enemies may be vested and to whom moneys due to enemies may be paid. The provisions of this Ordinance follow very closely the United Kingdom regulations.[1] The attributions of the Public Custodian were further strengthened on December 14, 1916, by applying to these islands the enactments of the Royal Proclamation of September 7, 1916.

Malta Defence Regulations, 1916.—On August 14, 1916, the first series of regulations, under the Order in Council of March 21, 1916, were made. The Governor was given comprehensive powers to take all measures for "securing the public safety and the defence of these islands and other purposes connected therewith." The output of these regulations has been very considerable.

Food Supplies.—With a view to maintaining a sufficient stock of commodities regarded as necessaries of life and putting a stop to all attempts to "corner" certain kinds of provisions, a Committee was appointed on August 17, 1916, to advise the Government on all such matters. A further step was taken on December 22, 1916, when a regulation was passed enabling a Control Board to deal with all questions relating to the "supply, manufacture, production, distribution, and sale of wheat, flour, and bread." Subsequent regulations extended the competence of the Board to all articles of commerce forming part of the food supply of the Colony or being necessary for the wants of the public.

3. CYPRUS.

Of the seven laws passed during the year, three were concerned with appropriation.

[1] 5 & 6 Geo. V. c. 12.

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Printed by Hazell, Watson & Viney, Ld., London and Aylesbury, England.